

Devendra @ Mangal And Another vs State Of U.P. on 3 March, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29336

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7330 of 2025

Applicant :- Devendra @ Mangal And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar Srivastava (Senior Adv.), Shilpy Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed by the applicants is taken on record.
2. Sri Yogendra Pal Singh, Advocate submits that today he has filed his power on behalf of the informant in the registry of this Court and therefore his name could not be shown in the cause list, however he submits he is ready to argue the matter.
3. Heard Ms. Shilpy Sharma, learned counsel for the applicants, Sri Yogendra Pal Singh, learned counsel for the informant and Sri Jhamman Ram, learned AGA for the State.
4. The instant bail application has been filed seeking release of the applicants on bail in Case Crime No.245 of 2024, under Sections 191(2), 191(3), 190, 103(1), 351(2), 351 (3), 333, 60(2) of B.N.S., Police Station Bhawanpur, District Meerut during pendency of the trial.

5. FIR of the present case was lodged on 01.10.2024 against applicants and two others and according to the FIR on 01.10.2024 at about 3.00 PM in the afternoon son of the applicant had gone to the house of Shiv Kumar son of Ishwarchand and applicant along with three others after entering in the house of Ishwarchand made fire upon him due to which son of informant sustained serious injuries. It is further mentioned in the FIR that incident has been witnessed by Shivkumar, Abhishek and the informant.

6. Learned counsel for the applicants submits, however informant claimed himself to be eye witness but he does not appear to be eye witness as according to the informant himself his son had gone to the house of Ishwarchand and he never stated that he also accompanied his son and it appears only due to previous enmity which has been itself admitted by the informant in the FIR, applicants along with others have been made accused in the present matter.

7. She further submits, as per the FIR Shivkumar son of Ishwarchand and Abhishek were also the eye witnesses but from their statements which have been annexed along with the instant bail application it reflects they did not disclose the name of any accused person who made assault upon the deceased and according to them when deceased was inside the house of Ishwarchand then some unknown person who concealed their face made assault.

8. She next submits during investigation, however investigating officer also recorded the statements of number of other alleged eye-witnesses including Ishwarchand, the owner of the shop where incident occurred but they also repeated the version of Shivkumar and Abhishek and they did not disclose the name of any accused who opened fire and made assault upon him.

9. She further submits from the material available on record it reflects merely on the basis of version of the FIR and statement of the informant applicant and others have been made accused in the present matter and as presence of the informant at spot appears to be doubtful, therefore at this stage it cannot be said that applicants along with others participated in the alleged crime.

10. She next submits, however earlier also applicants were made accused in one another case but in that case after investigation final report has been submitted.

11. She next submits, in the present matter applicants are in jail since 24.10.2024.

12. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that from the FIR and the statement of the informant recorded during investigation it reflects he was himself one of the eye-witness and he disclosed the name of applicants therefore it cannot be said that on the basis of false allegation due to enmity applicant has been made accused in the present matter but they could not dispute the fact that incident occurred in the house of Ishwarchand and neither Ishwarchand nor his son nor any other witness who were present at the spot disclosed the name of any accused who made assault upon the deceased. They further could not dispute the fact that all these witnesses stated that unknown accused persons who concealed their faces made assault upon the deceased.

13. Learned A.G.A. as well as learned counsel for the informant also could not dispute the fact that however informant claimed himself to be one of the eye witness but he did not stated that he also accompanied the deceased i.e. his son when he was going to the house of Ishwarchand. They further could not dispute the fact that none of the eye witness including Ishwarchand and Shivkumar, the owner of the house where incident occurred stated in their statement that informant was also present at the time of incident. They further could not dispute the fact that at present applicants are not having any other criminal history and in the present matter they are in jail since 24.10.2024.

14. I have heard learned counsel for the parties and perused the record of the case.

15. However, it reflects applicants are named in the FIR along with three others and as per FIR they by causing fire arm injury along with others committed the murder of the son of the informant and it also reflects that as per the informant he is one of the eye witness but admittedly incident occurred in the house of Ishwarchand and neither Ishwarchand nor his son Shivkumar stated that informant was also present at the spot i.e. in their house at the time of incident.

16. Further neither from the FIR nor from the statement of informant recorded during investigation it could be reflected that he accompanied his son i.e. deceased to the house of Ishwarchand and considering all the above facts the argument advanced by learned counsel for the applicant that actually informant is not an eye witness cannot be ruled out at this stage.

17. Further, incident occurred in the house of Ishwarchand but neither Ishwarchand nor his son Shivkumar nor any other eye witness could even disclose the name of the accused persons who made assault upon the deceased. From their statements it could only be reflected that some unknown person made assault upon the deceased and these unknown persons also concealed their faces and therefore from the material available on record it reflects except the statement of informant there is no cogent evidence against the applicant on record. As presence of the informant at the place of incident appears to be doubtful therefore, argument advanced by learned counsel for the applicants that there is no cogent evidence against the applicants cannot be ruled out at this stage.

18. Further enmity between both the sides is admitted and therefore, informant was having motive to falsely implicate the applicants. Further, however, it also reflects earlier also applicants were made accused in another case but in that case after investigation final report was submitted.

19. Further, in the present matter applicants are in jail since 24.10.2024.

20. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicants are entitled to be released on bail.

21. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

22. Let the applicants - Devendra @ Mangal and Veer Singh be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicants shall appear before the trial court on the dates fixed, unless their personal presence is exempted.

(ii) The applicants shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicants shall not indulge in any criminal and anti-social activity.

23. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicants.

24. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 3.3.2025 Neeraj