

Court No. - 71

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51149 of 2023

Applicant :- Vinod Bihari Lal

Opposite Party :- State of U.P.

Counsel for Applicant :- Kumar Vikrant, Amit Kumar Srivastava

Counsel for Opposite Party :- G.A., Vishal Tandon

Hon'ble Mrs. Manju Rani Chauhan, J.

Counter affidavit as well as rejoinder affidavit filed by learned counsel for the informant and learned counsel for the applicant respectively, today in the Court, are taken on record.

Heard Mr. Amit Kumar Srivastava, learned counsel for the applicant at length.

Perusal of the order sheet shows that on 06.12.2023, learned AGA sought time to file counter affidavit. On 20.12.2023, on joint request of learned counsel for the parties, the matter was posted for 22.12.2023. On 22.12.2023, Mr. Vishal Tandon appeared on behalf of the first informant and on his request, the matter was posted for 08.01.2024. Mr. Vishal Tandon, learned counsel for the informant was granted time to file counter affidavit by order dated 08.01.2023. Thereafter, on 23.01.2024, on the request of Mr. Sunil Kumar, learned AGA appearing in the matter alongwith learned Additional Advocate General, Mr. P.K. Giri, the matter was posted for 07.02.2024 as no one was present on behalf of the applicant even in the revised call to press the bail application on the said date. Thereafter, on 07.02.2024, supplementary affidavit as well as counter affidavit were taken on record and at the request of learned counsel for the applicant, the matter was posted for today, i.e., 19.02.2024, as fresh.

Today, at the first instance while the case was taken up, Mr. Amit Kumar Srivastava, learned counsel for the applicant made a statement at the bar that the matter has not been argued on any occasion and it is for the first time, he is being given the opportunity to address the case on merits.

As per allegations in the first information report, four unknown persons on motorcycles on 20.06.2023, Tuesday, in the night at about 10 O'clock, when the informant was going alone on Scooty to Naini for some important work, when he reached old Naini

Bridge, just before crossing the bridge, four persons on two bikes came from the backside and after reaching beside the informant, showing country made pistol, threatened the informant stating that he should withdraw the case lodged against R.B. Lal and Vinod B. Lal and others at Fatehpur. They also threatened for dire consequences in case he does not withdraw the said case. It has been further alleged that they dashed the bikes on the informant due to which he sustained injuries on right shoulder, back, both knees and became unconscious. After regaining consciousness, the passerby took him to Global Care Hospital at Naini where few known persons of the informant reached, and after administration of treatment and awakening he dialed 112 from mobile number 8188902337 belonging to some known persons. Police reached the place and a first information report was lodged.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. He is not named in the FIR as the same was lodged against four unknown persons. The investigating officer has recorded statement of one Dwarika Prasad Prajapati, Security Guard, under Section 161 Cr.P.C. who has specifically stated that he was on night duty at Old Bridge and no such incident as alleged in the FIR took place, but an accident took place due to collusion of a scooty and a bike. The investigating officer also recorded statements of few other persons, who have denied any such incident. Statement of compounder of Global Health Care Hospital, namely, Sachin Kumar has been recorded who has stated that first-aid was given to the informant and the injured-informant was not unconscious but was very much normal when he came to the hospital. He also stated that he was informed by the injured that he has sustained injuries as his scooty fell due to rash driving of a motorcyclist. After investigation Section 325 has been added deleting Section 308 IPC.

After three months, supplementary statement of the informant has been recorded, wherein a story has been set up stating therein that he was informed by Pawan Soni and Krishna Pandey that a conspiracy is being hatched by the applicant against him as he had lodged a case against the applicant. A medical report has been placed at Page-55 of Community Health Centre, Chaka, Prayagraj, according to which the injured sustained 12 injuries, all simple in nature about one day old caused by hard blunt object. X-ray for injury no. 4 on right shoulder has been advised therein.

Learned counsel for the applicant submits that, for the first time after three months, a story has been built up to show that the

applicant had conspired for causing such an incident. As per the information given by the informant-injured himself to the compunder he sustained injuries due to rash driving of a motorcyclist and has not narrated any such incident as alleged in the FIR, anywhere.

Learned Additional Advocate General Mr. P.K. Giri placing reliance on the statement of the doctor of Government Hospital, has opposed the bail application emphatically. Though he advanced his submissions extensively, however, could not fortify it on the basis of any material as no such document has been appended along with the counter affidavit drafted by Mr. Sunil Kumar, learned AGA.

On perusing the record, this Court finds that the counter affidavit filed by the State, barely holds any rational reply to the averments made in the bail application, whereas it is bereft of relevant documents. The counter affidavit seems to have been drafted heedlessly and in a very casual manner.

State Government has a battery of efficient and competent counsels to render their assistance on its behalf to facilitate the Court so as to ensure ends of justice. However, it is commonly experienced by this Court that the State Counsels fail to extend their ability in drafting the counter affidavits up to the standards they are expected for. Such practice not only wastes precious time of this Court but also becomes stumbling block in administration of justice. It is well known practice in this Court that learned Additional Advocate Generals are nominated important matters for effective representation of the State before the Court. Thus, learned Additional Advocate General Mr. P.K. Giri was obliged to have been conscious enough with respect to the reply filed on behalf of the State, basis upon which he prepared the case to argue on behalf of the State.

State Government Counsel's Office is required to formulate some effective practice to ensure drafting of counter affidavits properly, which will serve the purpose of establishment it is meant for. In few cases replies filed on behalf of the State are found up to mark, whereas in most of the cases adjournment is sought on the ground of bringing relevant documents on record, due to insufficient or incomplete reply in counter affidavits. The counter affidavit filed in the case in hand is an epitome of it, wherein Mr. P.K. Giri has extensively argued on behalf of the State, however, his submissions are not substantiated with the pleadings in counter affidavit, and he seems to be oblivious and unaware of the

documents brought on record in the Counter Affidavit.

Higher Authorities of the State Office, responsible to safeguard the State's interest in the Courts, should bring forth such mechanism which may ensure drafting of effective, coherent and comprehensive counter affidavits.

At the request of learned Additional Advocate General, a week's time is granted to file a better counter affidavit annexing all the necessary documents including the statement of the doctor.

Put up this case on **1st March, 2024**, as fresh.

Registrar (Compliance) shall communicate a copy of this order to learned Advocate General and learned Government Advocate.

Order Date :- 19.2.2024

Jitendra/-