

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1727 of 2023

Applicant :- Qayamuddin

Opposite Party :- State of U.P.

Counsel for Applicant :- Ambreen Masroor, Sadrul Islam Jafri, Sr. Advocate

Counsel for Opposite Party :- G.A., Brijesh Kumar Mishra

Hon'ble Samit Gopal, J.

1. Heard Shri N.I. Jafri, learned Senior Advocate assisted by Shri Asif Ahmad holding brief of Shri S.I. Jafri, learned counsel for the applicant and Shri Vijay Prakash Mishra holding brief of Shri Brijesh Kumar Mishra, learned counsel for the first informant and Shri Shashikant Pandey, learned counsel appearing for the State and perused the records.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant, seeking enlargement on bail during trial in connection with Case Crime No. 105 of 2022, under Sections 147, 148, 149, 323, 325, 504, 506, 302, 307, 308/34, 120-B, I.P.C., registered at Police Station Baghauch Ghat, District Deoria.

3. The first information report of the matter was lodged on 19.06.2022 at 19:15 hours by Atiullah naming the applicant, and 12 other persons along with 10-12 unknown persons alleging therein that on 18.06.2022 at about 4:15 P.M., the accused persons armed with lathi, danda and iron rod came to his house and by hurling abuses entered inside the house and started assaulting him and his wife Aaysha Khatoon and sons Abdulla and Tabrez, daughters Anwari and Azgari and daughter-in-law Shayra wife of

Abdulla reached there and tried to save him on which they were also assaulted. His daughter Anwari and daughter-in-law Shayara became unconscious due to the assault in the house. For saving himself and other persons ran out of the house. They were mercilessly beaten. Qayamuddin, the applicant, assaulted his wife Aaysha with a rod on her head due to which her brain came out. The other persons also resorted to assault after which they ran away. Someone of the village informed the police about it. On information, police came and took them to CHC where doctor examined them and referred them to Deoria Hospital. In Deoria Hospital, the doctors declared Aaysha to be dead and the treatment of other persons is going on.

4. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that although in the first information report the applicant is named as an accused and there is an allegation of his assaulting on Aaysha wife of the informant with an iron rod due to which she received injury on her head and subsequently she died but the said first information report is a document which has been lodged after unexplained delay and is a manipulated document. It is argued that the injured persons were examined on 21.06.2022 and 22.06.2022, there is no medical examination report of the injured persons prior to the said date which would show as to when and where they were medically examined. Despite the fact that in the first information report, it is mentioned that police had arrived at the place of occurrence and they were taken to CHC from where they were referred to the District Hospital where they are being treated. It is argued that looking to the sequence of events and the fact that police had arrived and lodging of the first information report on the next date at 7:15 P.M. goes to show that the same was the

afterthought after consultation just in order to falsely implicate the accused persons. It is argued that the applicant has no motive to commit the present incident. His implication although is there on the basis of an alleged eyewitness account but the prosecution case is silent regarding any motive upon the applicant to commit the present offence. It is argued while placing para-27 of the affidavit that the applicant is involved in as many as 14 cases but the said cases are false cases which have been lodged at the behest of the police. The applicant is in jail since 03.09.2022.

5. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail and argued that the applicant is named in the first information report and has been assigned the role of assault upon the deceased Aaysha wife of the first informant with iron on her head due to which her brain came out and she died and the same corroborates with the medical examination report. It is argued that there is recovery of an iron rod on the pointing of the applicant. It is further argued that the present is a case in which one person has died and there are six injured persons including the first informant and as such the factum of the incident at this moment cannot be doubted. It is argued that the injured witnesses have named the applicant and have assigned the role of assault by him on the deceased, as such, prayer for bail be rejected.

6. After having heard learned counsel for the parties and perusing the records, it is evident that applicant is named in the first information report and has been assigned the role of assault upon the deceased with an iron rod. The medical examination report corroborates the prosecution version. Insofar as the medical examination report of the injured persons are concerned, although

the medical examination report states of the date as 21.06.2022 and 22.06.2022 but the perusal of the same would go to show that there were stitched wounds present on their body and duration of the injuries were opined to be about three days. The same would thus go to show that prayer has been medical aid provided to them insofar as the non surfacing of the first medical examination report is concerned, the matter at best would in the trial. The applicant has criminal history.

7. Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is **rejected**.

Order Date :- 29.11.2023
Mukesh Kr.

(Samit Gopal,J.)