

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3338 of 2023

Applicant :- Dileep And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajeet Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicants is taken on record.
2. Heard Sri Ajeet Kumar Srivastava, learned counsel for the applicants and Sri Brijesh Pratap Singh, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicants on bail in Case Crime No. 229 of 2022, under Sections 304, 504 IPC, Police Station- Khetasarai, District- Jaunpur, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicants and according to the FIR, on 26.11.2022 when cousin brother of the informant had gone to meet Neelam then brothers of Neelam and her mother i.e. applicants made assault on his head and due to assault made by them, he died.
5. Learned counsel for the applicant submitted that applicants are innocent and totally on the basis of false allegation, FIR of the present case was lodged against them.
6. He further submitted that on 21.02.2023 co-ordinate Bench of this Court although, granted bail to applicant no. 3 Basmati but postponed the hearing of bail applications of applicant nos. 1 and 2.
7. He further submitted that from the perusal of the record, it reflects that informant was not an eye-witness and it appears that Neelam, the sister of the applicants was the sole eye-witness and although, she in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that applicants along with their

mother made assault upon the deceased and due to assault made by them deceased died but during trial prosecution has moved an application before the trial court with a prayer to discharge the Neelam as witness and the application moved by the prosecution has been allowed by the trial court.

8. He further submitted that after discharge of sole eye-witness Neelam, no eye-witness left and therefore, there is no other evidence left against the applicants.

9. He further submitted that applicants are not having any criminal history and they are in jail since 28.11.2022 i.e. for almost a year.

10. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the fact that in the present case Neelam, sister of the applicants was the sole eye-witness and prosecution has got discharged her on the ground that she had already won over by the applicants.

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

12. Considering the fact that sole eye-witness Neelam on the application of the prosecution has been discharged by the trial court and applicants are in jail for almost a year and they are not having any criminal history, in my view applicants are entitled to be released on bail.

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

14. Let the applicants- **Dileep** and **Deepchand** 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 his 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.

15. 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.

16. 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 :- 13.10.2023

KK Patel