

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9102 of 2022

Applicant :- Nandram

Opposite Party :- State of U.P.

Counsel for Applicant :- Satish Chandra Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Shri Satish Chandra Dubey, learned counsel for the applicant and Shri Ghan Shyam Mishra, learned Brief Holder for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.243 of 2020, under Sections 304, 308, 323, 324, 504, 506 I.P.C., Police Station Shahi, District Bareilly, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 24.06.2020 against applicant and two others and according to the FIR, the elder brother of the informant resided alongwith the applicant and on 17.06.2020 applicant and other accused persons due to some dispute made assault upon him through axe.
4. Learned counsel for the applicant submits that initially F.I.R. of the present case was lodged, under Sections 323, 324, 308, 504, 506 I.P.C. but after the death of the injured, case was converted under Section 304 I.P.C.
5. He further submits that admittedly informant of the case was not an eye-witness and during investigation after ten

days, Investigating Officer recorded the statement of one Jailal under Section 161 Cr.P.C., who claimed himself to be an eye-witness and stated that some dispute arose between applicant and deceased and thereafter applicant assaulted him and has taken him to the hospital.

6. He further submits that statement of Jailal is vague as he neither disclosed the time and date of the incident nor he disclosed any weapon and even according to him, applicant himself has taken the deceased to the hospital.

7. He further submits that there is no cogent evidence on record, which can show that applicant is person, who caused injuries to the deceased and even according to the statement of Jailal, who is sole eye-witness, applicant was not having any intention to cause death of the deceased.

8. He further submits that applicant is facing trial under Section 304 I.P.C. and he is not having any criminal history and he is in jail in the present matter since 08.09.2020 i.e. for last more than three years.

9. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

10. However, applicant is named in the FIR but admittedly informant of the case is not an eye-witness and it reflects from the record that after ten days Investigating Officer recorded statement of one Jailal and he stated that some dispute arose between applicant and deceased and thereafter applicant beaten the deceased but statement of Jailal appears

to be vague as he neither mentioned the time and date of the incident nor he assigned any weapon. Further from his statement, it appears that after the incident, applicant himself has taken the deceased to the hospital therefore, even from the statement of the sole witness Jailal, it could not be reflected that applicant was having intention to cause death of the deceased.

11. Further, applicant is not having any criminal history and he is in jail in the present matter since 08.09.2020 i.e. for last more than three years.

12. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be enlarged on bail.

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

14. Let the applicant- **Nandram**, 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 applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant 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 applicant 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 applicant.

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 :- 5.12.2023

Zafar