

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11595 of 2023

Applicant :- Kaushaliya Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Ms. Akanksha Srivastava, holding brief of Shri Ashok Kumar Srivastava, learned counsel for the applicant and Shri Shashikant Pandey, learned counsel for the State.

2. This is the second bail application, the first bail application of the applicant was rejected vide order dated 21.09.2021 passed in Criminal Misc. Bail Application No. 29726 of 2021 Kaushalya Devi vs. State of U.P. by this Court.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Kaushaliya Devi, seeking enlargement on bail during trial in connection with Case Crime No. 86 of 2020, under Sections 147, 148, 149, 302 I.P.C., Police Station Kon, District Sonbhadra.

4. Learned counsel for the applicant argued that the case of the prosecution is of common and general role of assault by all the accused persons with *lathis*, *danda* and sharp weapon upon the deceased, Smt. Sheela Devi. It is argued that the co-accused Keval has been granted bail by a co-ordinate Bench of this Court vide order dated 07.02.2023 in Criminal Misc. Bali Application No. 1248 of 2022, co-accused Gabbar Singh has been granted bail by a co-ordinate Bench of this Court vide order dated 01.03.2023 in Criminal Misc. Bali Application No. 58832 of 2022 and co-accused Sikandar has been granted bail by a co-ordinate Bench of this Court vide order dated 20.03.2023 in Criminal Misc. Bali Application No. 59137 of 2022. The copy of the said orders have been produced before the Court which are taken on record. It is further argued that the applicant is a lady and is entitled to the benefit of Section 437 Cr.P.C. It is further argued that co-accused Jitendra has been granted bail by a co-ordinate bench of this Court vide order dated 02.02.2023 passed in Criminal Misc. Bail Application No. 58061 of 2022 (Jitendra vs. State of U.P.). The copy of the said order is annexed as annexure no. 8 of the affidavit. It is argued that as such, applicant also deserves to be released on bail. She

is in jail since 18.11.2020.

5. Per contra, learned counsel for the State opposed the prayer for bail and argued that the first bail application of the applicant was rejected by a detailed and a speaking order by this Court on 21.09.2021. The co-accused who have been granted bail is a subsequent event. It is argued that parity is not binding on the Court. It is further argued that this Court has even considered the fact that the applicant is a lady while rejecting the first bail application of the applicant. It is further argued that there is no fresh and new ground in the present case, as such the same be also rejected.

6. After having heard learned counsel for the parties and perusing the records, it is evered that the first bail application of the applicant was rejected by this Court vide order dated 21.09.2021. The said order reads as thus:-

"Heard Sri Kamal Dev Rai, learned counsel for the applicant, Sri Viresh Kumar Gupta, learned counsel for the first informant and Sri Akhilesh Kumar Tripathi, learned counsel for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Kaushaliya Devi, seeking enlargement on bail during trial in connection with Case Crime No. 86 of 2020, under Sections 147, 148, 149, 302 I.P.C., registered at Police Station Kone, District Sonebhadra.

Learned counsel for the applicant argued that the applicant is a lady. It is argued that although in the first information report, the applicant along with five other accused persons is named therein but common and general role of assault has been assigned to all the accused persons with lathi, danda and sharp weapon. It is argued that the first informant is not an eye-witness to the incident but his wife Smt. Rani Devi claims herself to be an eye-witness of the incident. Learned counsel has placed the statement of Smt. Rani Devi before the Court and has argued that even therein she has assigned common and general role to all the six accused persons of assault upon Uday Pratap Singh and Smt. Sheetla Devi with lathi, danda, kicks and fists but there is no specification of the role whatsoever.

It is argued that as per the postmortem report of Smt. Sheetla Devi although is stated to have received five injuries on her person but the cause of death is coma as a result of head injury and the same is the injury no.1 being the lacerated wound on the right side of forehead whereas the other four injuries are on different parts of the body which have not contributed towards her death. It is further argued that even the other deceased Uday Pratap Singh is noted to have received six injuries on his body and the doctor has opined the cause of death as coma due to haemorrhage (cause multiple trauma) which was also the head injury received by him which is the injury no.1 whereas the other five injuries are on the other parts of the body which also did not contribute his death. It is argued that as such, there is no specification of the fatal injuries received by both the deceased persons. It is further argued that the applicant is a lady and is entitled to the benefit of Section 437 Cr.P.C. The applicant is in jail since 18.11.2020.

Per contra, learned counsel for the first informant and learned counsel for the State vehemently opposed the prayer for bail and argued that the applicant is named in the first information report and even in the statement of Smt. Rani Devi, who is the sole eye-witness of the incident and role has been assigned to the applicant along with other co-accused persons of assault on both the deceased persons. It is argued that the deceased persons have received injuries all over their body and the injuries are serious in nature. The present case, is a case of double murder and the incident took place at 5 PM and there was ample light to identify the accused persons. It is argued that as such, the implication of the applicant is there in the present case and the prayer for bail be

rejected.

After having heard the learned counsel for the parties and perusing the record, it is apparent that the applicant is named in the first information report and in the statement of solitary eye-witness Smt. Rani Devi and role has been assigned. The present case, is a case of double murder. Both the deceased persons have received multiple injuries which corroborate with the prosecution case.

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.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

The computer generated copy of such order shall be self attested by the counsel of the party concerned.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing."

7. The present case is a case of double murder. In the matter, both the deceased persons have received multiple injuries corroborating the prosecution case. In so far as the ground as argued regarding four co-accused being granted bail is concerned, it is trite law that parity is not binding upon the Court, it may have its persuasive value. The same has been held in detail in Criminal Misc. Bail Application No. 42092 of 2020 (***Dheeraj Kumar Shukla vs. State of U.P.***) in the order dated 06.07.2021 in paragraph 17.

8. Looking into the facts and circumstances of the case, no ground of bail is made out.

9. The bail application is ***rejected.***

Order Date :- 30.10.2023

Vipasha