

**Court No. - 84**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 15076 of 2023

**Applicant :-** Shiv Kumar @ Neela @ Neena

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Vinod Singh

**Counsel for Opposite Party :-** G.A.,Rewti Raman Patel

**Hon'ble Mrs. Sadhna Rani (Thakur),J.**

Heard learned counsel for the applicant and learned counsel for the first informant.

This is the second bail application moved on behalf of applicant Shiv Kumar @ Neela @ Neena with a prayer to release him on bail in Case Crime No.87 of 2021, under Sections 147, 148, 452, 323, 504, 308, 304 I.P.C., Police Station- Agauta, District Bulandshahr.

The first bail application of the applicant was rejected by this Court on 19.09.2022.

By moving the second bail it is argued by the learned counsel for the applicant that as per FIR the incident took place in three parts. First, when deceased Dhan Singh was irrigating his field and the pipe of the water was lying on the chakroad, the present applicant is said to have abused Dhan Singh. When he was resisted the applicant thrashed Dhan Singh with the baton. At the same time allegedly the brothers of the present applicant and other co-accused persons joined him with baton, stick and iron rods in thrashing Dhan Singh. Dhan Singh fell down on the floor being unconscious. Secondly, when the persons working in the nearby fields informed at the house of the Dhan Singh, the first informant reached at the spot and brought his unconscious father in the house and in the third part all the accused persons including the present applicant again assembled at the house of Dhan Singh/ first informant and again started thrashing first informant and his family members. In this physical altercation Dalchandra, Rajendri Devi, the wife of Dhan Singh, Mukesh Devi and first informant Indrapal are said to have injured.

It is further argued that only the first incident took place at the

instance of the applicant. In both the second and the third incident the general role is assigned to all the accused persons and all co-accused persons have been granted bail by this Court.

Secondly, it is argued that all the witnesses in the court have admitted that they were not present at the tube well at the time of incident.

Thirdly, in the cross case, the complaint filed by Dayaram, the brother of the present applicant, the first informant Indrapal and his family members total 10 persons have been summoned by the trial court to face trial under Sections 147, 148, 323, 324, 504, 506, 354A of I.P.C.

It is further argued that as per injury report of applicant Shiv Kumar one incised wound was also found on his skull caused in the same altercation between the parties on the date of incident and this injury of the applicant is not explained rather it is denied by the prosecution witnesses in their statements before the court. Placing the judgment of the Apex Court in ***Nand Lal and Others Versus The State of Chhattisgarh, 2023 0 Supreme(SC) 209*** the attention of the Court is drawn towards paragraph-26 of the judgement that in the murder case non-explanation of injuries sustained by the accused at the time of occurrence is a very important circumstance, which shows that the prosecution suppressed the genesis and the origin of occurrence. The witnesses by denying the injuries of the accused lying before the court and, therefore, their evidence is unreliable. Thus, it is argued that it is true that the initiation of the incident is attributed to the present applicant but later on all the co-accused persons are said to have joined him and the role of co-accused persons is shown to be general, who have been bailed out by this Court and, hence, the prayer of bail is made.

Learned counsel for the first informant opposed the prayer but admitted the fact that when the accused persons came to the house of the first informant there the physical altercation took place between the parties and in this physical altercation injury might have caused to the accused applicant- Shiv Kumar @ Neela @ Neena.

It is clear from the above facts that regarding the same incident in the cross case the first informant and his family members have been summoned to face trial by the trial court under Sections 147, 148, 323, 324, 504, 506, 354A of IPC. In the statements of the prosecution witnesses appeared till date before the trial court the

ignorance is shown about the injuries caused to the accused persons. Admittedly, co-accused persons, who have been bailed out, were shown to be involved in the physical altercation in the incident at the house of the first informant. The applicant is languishing in jail since 26.05.2021.

Perusing the record, considering the facts and circumstances of the case, the nature of allegations, arguments advanced by the learned counsel for the parties and without expressing any opinion on the merit of the case, I find it to be a fit case for granting bail to the applicant.

The second bail application is allowed.

Let the applicant- **Shiv Kumar @ Neela @ Neena**, who is involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:-

1. The applicant will attend and co-operate in the trial pending before the court concerned on the dates fixed after release.
2. The applicant will not tamper with the witnesses.
3. The applicant will not indulge himself in any illegal activities during the bail period.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the trial court shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case.

**Order Date :- 22.11.2023**

Radhika