

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 17545 of 2023

Applicant :- Pratap

Opposite Party :- State of U.P.

Counsel for Applicant :- Nasiruzzaman, Manoj Kumar Srivastava, Mohit Kumar Jaiswal, Ram Jatan Yadav

Counsel for Opposite Party :- G.A., Hemendra Pratap Singh, Pawan Kumar Bhardwaj

Hon'ble Sameer Jain, J.

1. Heard Sri Mohit Kumar Jaiswal, learned counsel for the applicant, Sri Tarun Kumar Chauhan, Advocate, holding brief of Sri Hemendra Pratap Singh, learned counsel for the informant and Sri Ghanshyam 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. 435 of 2022, under Sections 147, 148, 149, 427, 323, 302, 34 IPC, Police Station- Tappal, District- Aligarh, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 24.10.2022 against applicant and seven others and according to the FIR, on 23.10.2022 at about 9:30 p.m. in the night when informant was going in his Baleno Car then on the way applicant and other accused persons intercepted him and they tried to drag his son, who was sitting on the side of the informant and co-accused Babloo and Vijaypal opened fire upon him and thereafter other accused persons including applicant made assault through wooden stick. It is further mentioned in the FIR that due to fire-arm injury, son of the informant died at spot. It is further mentioned in the FIR that son of the informant was having illicit relationship with the wife of co-accused Vijaypal.

4. Learned counsel for the applicant submitted that even as per the prosecution, role of causing fire arm injury to the deceased has been attributed to co-accused Vijaypal and Babloo and only allegation against the applicant is that he alongwith remaining accused persons used wooden stick. He further submitted that post-mortem report of the deceased suggests that deceased died

due to fire-arm injury. He further submitted that even motive to commit crime was against co-accused Vijaypal. He further submitted that all the accused persons, who were having wooden sticks, have already been released on bail and on merit, case of applicant is at par with them and their bail orders have been annexed alongwith the instant bail application.

5. He further submitted that applicant is not having any criminal history and she is in jail since 18.03. 2023 i.e. for last almost nine months.

6. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that applicant absconded for five months and he appeared before the trial court only on 18.03.2023 but both the counsels could not dispute the fact that role of causing fire arm injury to the deceased has been attributed to co-accused Babloo and Vijaypal and deceased died due to fire-arm injury. They further could not dispute the fact that motive to commit crime was against co-accused Vijaypal and all the other accused persons, who were having wooden sticks, have already been released on bail.

7. I have heard both the parties and perused the record of the case.

8. However, from the record, it reflects that after about five months of the alleged incident, applicant appeared before the court concerned but from the record, it also reflects that Vijaypal and Babloo were the principal accused and as per the allegation, they caused fire-arm injury to the deceased and applicant and other five remaining accused persons made assault through wooden sticks. Further, post-mortem report of the deceased suggests that he died due to fire-arm injury.

9. Further, even as per the FIR, co-accused Vijaypal was having motive to commit crime as deceased was having illicit relationship with his wife and all the other accused persons, except co-accused Vijaypal and Babloo, have already been released on bail by co-ordinate Benches of this Court and on merit, case of applicant is at par with them.

10. Further, applicant is not having any criminal history and she is in jail since 18.03. 2023 i.e. for last almost nine months.

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

12. Accordingly, without expressing any opinion on the merits of

the case, the instant bail application is **allowed**.

13. Let the applicant- **Pratap** 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.

14. 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.

15. 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 :- 7.12.2023

KK Patel