

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 20603 of 2023

Applicant :- Kamal Kishore

Opposite Party :- State of U.P.

Counsel for Applicant :- Kamlesh Kumar Dwivedi, Ajay Mishra, Ashish Kumar Mishra, Prashank Mishra, Shri Krishna Mishra

Counsel for Opposite Party :- G.A., Gaurav Srivastav, Rajesh Kumar Srivastava

Hon'ble Sameer Jain, J.

1. Heard Sri Ajay Mishra, learned counsel for the applicant, Sri Rajesh Kumar Srivastava, learned counsel for the informant and Sri Suresh Bahadur Singh, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 206 of 2022, under Sections 302, 504, 506, 34 IPC, Police Station- Bah, District- Agra, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant and three others and according to the FIR, on 17.10.2022 at about 5:00 p.m. in the evening when husband of the informant was returning home alongwith his daughter then on the way applicant alongwith other accused persons made assault upon him through axe and sharp edged weapon (spear) and due to assault made by them, he sustained injuries and died.
4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and applicant never participated in the incident and actually applicant was witness in the murder case of his brother in which deceased was one of the accused person and only due to this reason, applicant has been made accused in the present matter.
5. He further submitted that however, in the FIR and in the statements of the informant and her daughter only general allegation has been made against four accused persons but during investigation, involvement of two accused persons, who were named in the FIR alongwith applicant, were found false and charge

sheep was filed only applicant and one another co-accused.

6. He further submitted that however, during investigation when applicant was arrested then it is alleged that on his pointing out, one blood stained axe was recovered, which was alleged to have been used in the crime but the alleged recovery was made before the police personnel and no public witness was taken at the time of recovery.

7. He further submitted that even from the FSL report, it could not be reflected that the blood stain mark, which was found on the axe, was of the deceased.

8. He further submitted that deceased was hardened criminal and he was having several criminal history to his credit, therefore, there is possibility that somebody else has committed his murder and subsequently due to enmity, applicant has been made accused in the present matter.

9. He further submitted that applicant is not having any criminal history and he is in jail since 03.11.2022.

10. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that informant and daughter of the deceased both were the eye-witnesses and during investigation, statements of number of other witnesses were also recorded by the Investigating Officer and all of them categorically stated that applicant participated in the incident and three independent witnesses, who claimed themselves to be eye-witnesses, stated that applicant is the person, who caused axe blow upon the deceased and on the pointing out of the applicant blood stained axe was also recovered.

11. Learned counsel for the informant further submitted that enmity is double edged weapon, therefore, merely on the basis of enmity, it cannot be said that applicant has been falsely implicated and possibility cannot be ruled out that due to enmity, applicant committed the murder of the deceased.

12. He further submitted that however, deceased was having criminal history to his credit but merely on this basis no presumption can be drawn that some other person committed his murder as there is eye-witness account, therefore, prima facie, it appears that applicant committed the murder of the deceased alongwith other accused persons, therefore, the instant bail application is liable to be dismissed.

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

14. However, from the record, enmity between both the parties is apparent but I find force in the argument advanced by learned counsel for the informant and learned AGA that enmity is the double edged weapon.

15. Further, there is eye-witness account and in their statements recorded during investigation, number of eye-witnesses categorically stated that applicant participated in the incident and three independent witnesses also stated that applicant caused axe injury to the deceased.

16. Further, post-mortem report of the deceased suggests that he sustained injury caused by sharp edged weapon and after arrest on the point out of the applicant, blood stained axe was also recovered.

17. However, from the record, it reflects that deceased was having criminal history but merely on the basis of criminal history of the deceased, at this stage, statements of the eye-witnesses cannot be completely disbelieved or discarded.

18. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail.

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

20. 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 :- 2.12.2023

KK Patel