

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24954 of 2023

Applicant :- Kallu

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajeshwar Prasad Sinha

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.

2. Heard Sri R.P. Sinha, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 410 of 2021, under Sections 302, 504, 34 IPC, Police Station- Puramufti, District- Prayagraj, during pendency of the trial in the court below.

4. FIR of the present case was lodged against applicant and two others and according to the FIR, due to family dispute, on 23.12.2021 at about 9:00 p.m. in the night, some dispute arose between applicant and husband of the informant and applicant gave axe blow on the head of the husband of informant and due to that he died at spot. It is further mentioned in the FIR that after hearing noise, informant alongwith her *jeth* arrived at spot and tried to save the deceased.

5. Learned counsel for the applicant submitted that applicant is the real brother of the deceased and only due to property dispute, he has been made accused in the present matter. He further submitted that nobody could witness the real incident and even according to the informant, she alongwith her *jeth* arrived at spot after hearing the noise and similar statement was given by her in her statement recorded under Section 161 Cr.P.C. and even from the statement of the *jeth* of the informant namely Chaube Lal, it appears that he also arrived at spot after the incident.

6. He further submitted that although, as per the allegation, applicant gave axe blow on the head of the deceased but post-

mortem report suggests that he sustained three injuries and injury no. 1 is lacerated wound of 1x1 c.m. dimension on the left side of forehead and according to the doctor, he died due to this injury. He further submitted that axe is a sharp edged weapon, therefore, it appears that he sustained this injury in some other manner and subsequently due to enmity, applicant has been roped in the present matter alongwith others.

7. He further submitted that applicant is not having any criminal history and he is in jail since 01.01.2022 i.e. for more than one and half years.

8. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is the brother of the deceased and as per the allegation, he gave axe blow on the head of the deceased and post-mortem report also corroborates that deceased died due to head injury but could not dispute the fact that even from the FIR and statements of both the witnesses, it appears that informant and witness Choube Lal arrived at spot subsequently after hearing the noises and axe is a sharp edged weapon and deceased died due to lacerated wound sustained by him on his head.

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

10. However, as per the allegation, due to assault made by the applicant on the head of the deceased through axe, he died but post-mortem report of the deceased suggests that he sustained three injuries, injury no. 1 is lacerated wound of 1x1 c.m. dimension on his head, injury no. 2 is multiple abraded contusion and injury no. 3 is incised wound skin deep and according to the doctor, deceased died due to injury no. 1 and, therefore, I find force in the argument advanced by learned counsel for the applicant that at this stage, prima facie it appears that deceased died due to injury caused by blunt object not by axe, which is sharp edged weapon.

11. Further, from the perusal of the record, it reflects that there are two witnesses, informant and her *jeth* and it appears that both arrived at spot after the incident.

12. Further, applicant is not having any criminal history and he is in jail since 01.01.2022 i.e. for more than one and half years.

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

bail.

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

15. Let the applicant- **Kallu** 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.

16. 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.

17. 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 :- 3.11.2023

KK Patel