

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31904 of 2023

Applicant :- Raghuvar

Opposite Party :- State of U.P.

Counsel for Applicant :- Nanhe Lal Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Nanhe Lal Tripathi, learned counsel for the applicant, Sri Ajay Singh, learned AGA-I for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant **Raghuvar**, seeking enlargement on bail during trial in connection with Case Crime No. 10 of 2023, under Sections 149, 323, 304, 506 I.P.C., registered at Police Station Talbehat, District Lalitpur.
4. The FIR of the matter was lodged on 09.01.2023 by Om Prakash Raikwar against the applicant, naming four other persons and some unknown person alleging therein that on 08.01.2023 at about 01:30 pm his son Monu Raikwar had a fight for residence with the accused persons who then assaulted him. Raghuvar had a kulhari and was assaulting him with it. The other accused persons were assaulting him with lathi and danda on which kulhari was used from the back side on the head due to which Monu Raikwar received serious injuries. They intervened and were also assaulted by them. The accused persons then threatened them and ran away after which they went to see Monu who being disturbed with it consumed poison. The neighbours took him to CHC from where the doctors referred him to medical college where during treatment he died. The incident was witnessed by people of the locality who intervened. The dead body was subjected to postmortem after which it has been brought to the house.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that in so far as the first informant is concerned, he is not an eye witness of

the incident as he did not receive any injury. There is no document whatsoever on record to show that he received any injury. It is argued that although the applicant is stated to have been armed with kulhari and had assaulted the deceased with kulhari but the further version of the FIR is that the deceased consumed poison and then was taken to the hospital who then while being treated in the hospital died. It is argued that the postmortem examination report shows a single lacerated injury on the scalp of the deceased and the cause of death was opined as shock and hemorrhage due to antemortem head injury. However the doctor preserved the viscera for chemical analysis but the cause of death was conclusive to be the head injury received by the deceased. It is argued that there is no recovery of any incriminating material either from the possession or pointing out of the applicant. It is argued while placing para 30 of the affidavit that although the trial court while rejecting the bail application of the applicant has observed that there is a CCTV footage of the incident wherein the applicant is seen assaulting the deceased with kulhari but the perusal of the case diary goes to show that no such evidence or any video has been mentioned to be taken by the Investigating Officer and as such the said finding as recorded is perverse. He further argued that the applicant has no criminal history as stated in para 31 of the affidavit and is in jail since 10.01.2023.

6. Per contra, learned counsel for the State opposed the prayer for bail and argued that the applicant has been assigned the role of assaulting upon the deceased by kulhari from its back side. The postmortem examination report of the deceased corroborates the said prosecution version. The cause of death is conclusive but since there was an allegation of the deceased consuming poison the doctor has preserved viscera and sent for chemical analysis report of which the report is awaited. Learned counsel for the State could not dispute the averment in para 30 of the affidavit that no such photographs or video as alleged in bail rejection order is a part of the case diary. It is argued that since the applicant has been assigned the role of assaulting upon the deceased with kulhari and the injury corroborates as per postmortem examination report which was only the cause death the prayer for bail of the applicant be rejected.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the role assigned to the applicant is of assaulting upon the deceased by the back side of the kulhari. The postmortem examination report of the deceased corroborates with the said prosecution version. The cause of death of the deceased is

because of the said injury. I do not find it a fit case for bail.

8. Considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail.

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

Order Date :- 14.12.2023

M. ARIF

(Samit Gopal, J.)