

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37961 of 2023

Applicant :- Vijay Lakshmi Devi And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Akash Kumar Verma, Amit Kumar Yadav

Counsel for Opposite Party :- G.A., Karunesh Pratap Singh

Hon'ble Vikram D. Chauhan, J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard learned counsel for the applicants, Sri Amit Kumar Yadav, learned counsel for the informant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicants that as per allegation in the first information report, it is alleged that nominated accused persons including applicant have assaulted the injured as a result of same, injured has suffered injuries. The injury report of injured Amar Raj is at page 26 of the paper book where injury nos. 1, 2 and 3 were shown simple in nature and injury no. 4, X-ray was advised, however, no X-ray has been made.

3-A. Learned counsel for the applicant has drawn the attention of this Court to the injury report of injured Ansh Raj which is at page 27 of the paper book where injury no. 1 is caused by hard and blunt object and C.T. head was advised, however, no C.T. head was made and injury nos. 2, 3, 4, 5, 6, 7, 8 and 9 are simple in nature. So far as injuries of injured Shaweta Raj is concerned, the same are simple in nature and caused by hard and blunt object. Learned counsel for the applicant has further drawn the attention of this Court to the statement of doctor which is at page 44 of the paper book where he has stated that injuries of injured are simple in nature. The applicants have no criminal history. Applicants are languishing in jail since 7.8.2023 and in case they are released on bail, they will not misuse the liberty of bail and will cooperate in the trial.

4. Learned counsel for the informant opposed the prayer of bail but does not dispute the fact that C.T. head/X-ray of the injured have not been done and he could not show that injuries were fatal in nature.

5. Learned A.G.A. for the State opposed the prayer for bail but does not dispute factual matrix of the case.

6. Learned AGA has filed the compliance affidavit where it has been specifically stated that no C.T. head of injured Ansh Raj has been done. The injuries are non vital part. Learned AGA for the State has not brought any fact or circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicant for Bail.

7. It is not the case of the State that there is a possibility of interdicting fair trial by the accused-applicant if released on bail. No material has been shown that the Applicants are of such character that their mere presence at large would intimidate the witnesses or there is any material to show that applicant will use their liberty to subvert justice or tamper with the evidence.

8. The object of the bail is to secure the attendance of the accused, the detention of the accused pending trial cannot be punitive in nature as there is presumption of innocence in favour of the accused person. Learned A.G.A. has not brought any facts and circumstances to demonstrate that the character of the accused-applicant (s) is such that their mere presence at large would intimidate the witness.

9. Learned A.G.A. has not placed any reasonable apprehension of the witnesses being tampered with, the larger interest of the public/State will be at peril in case the Applicants are released on bail.

10. It is not the case of the State that the applicants have been convicted for any offence on previous occasion.

11. No material has been placed by the opposite party that the Applicants in the past has attempted to evade the process of law. Further, no material facts and circumstances have been placed to show that it is not in public interest or interest of society at large to release the applicants on bail.

12. No material has been shown to suggest that the applicants are at flight risk, has chance of repeating the offence, or intimidating

the witness if enlarged on bail.

13. In the present case, it is to be seen that as per allegation in the first information report, it is alleged that nominated accused persons including applicant have assaulted the injured as a result of same, injured has suffered injuries. The injury report of injured Amar Raj is at page 26 of the paper book where injury nos.1, 2 and 3 were shown simple in nature and injury no.4, X-ray was advised, however, no X-ray has been made. The injury report of injured Ansh Raj which is at page 27 of the paper book where injury no.1 is caused by hard and blunt object and C.T. head was advised, however, no C.T. head was made and injury nos.2, 3, 4, 5, 6, 7, 8 and 9 are simple in nature were shown. So far as injuries of injured Shaweta Raj is concerned, the same are simple in nature and caused by hard and blunt object. It is further to be seen that in the statement of doctor which is at page 44 of the paper book he has stated that injuries of injured are simple in nature. The applicants have no criminal history. Applicants are languishing in jail since 7.8.2023

14. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties and without expressing any opinion on the merits of the case, the Court is of the view that the applicants have made out a case for bail. The bail application is allowed.

15. Let the applicants **Vijay Lakshmi Devi** and **Pradeep Kumar** involved in Case Crime No. 684 of 2022, under Sections 147, 323, 325, 504, 308 IPC, Police Station Cannt., District Gorakhpur be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

- i. The applicants will not tamper with the evidence during the trial.
- ii. The applicants will not pressurize/intimidate the prosecution witness.
- iii. The applicants will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicants shall make themselves available for interrogation by a police officer as and when required.
- iv. The applicants shall not commit an offence similar to the offence of which they are accused, or suspected, of the

commission of which they are suspected.

v. The applicants shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.

vi. The applicants shall not leave India without the previous permission of the Court.

vii. In the event, the applicants changes residential address, the applicants shall inform the court concerned about new residential address in writing.

16. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 16.11.2023

D. Tamang