

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 38999 of 2023

**Applicant :-** Shiv Lakhan Trivedi @ Chandra Prakash Trivedi

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Vinayak Nath Singh, Kaushalendra Nath Singh, Romeshwari Prasad

**Counsel for Opposite Party :-** G.A., Manvendra Singh

**Hon'ble Rajeev Misra, J.**

1. Heard Mr. Romeshwari Prasad, the learned counsel for applicant, the learned A.G.A. for State and Mr. Manvendra Singh, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Shiv Lakhan Trivedi @ Chandra Prakash Trivedi seeking his enlargement on bail in Case Crime No. 53 of 2023, under Sections 302, 506, 504 IPC, Police Station-Kishanpur, District-Fatehpur during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 03.02.2023, a delayed FIR dated 04.02.2023 was lodged by first informant-Vimlesh Kumar (brother of the deceased) and was registered as Case Crime No. 53 of 2023, under Sections 302, 504, 506 IPC, Police Station-Kishanpur, District-Fatehpur. In the aforesaid FIR, three persons namely - (1) Ramlakhan Trivedi, (2) Shivilakhan Trivedi and (3) Mother of Ramlakhan have been nominated as named accused.

5. The gravamen of the allegations made in the FIR to the effect that on the exhortation made by the mother of named accused Ramlakhan Trivedi and Shivilakhan Trivedi assaulted the brother of the first informant with "Lathi" on account of which, he sustained various injuries on his person. Thereafter, the injured was taken to the hospital where the Doctor declared him to be brought dead.

6. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The inquest

(Panchayatnama) of the body of deceased was conducted on 04.02.2023. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as homicidal and the cause of death of deceased was said to be the injuries inflicted by the accused upon deceased with "Lathi". Thereafter, the post mortem of the body of deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the body of deceased, opined that the cause of death of deceased is Hemorrhage and Shock as a result of ante-mortem injuries. However, the viscera of deceased was preserved for chemical analysis. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

- "1. L/W of size 7 x 2 cm on Rt. frontal region.***
- 2. Contused swelling present on Rt. upper limb on Lateral aspect.***
- 3. Contused swelling of size 22 x 22 cm present in Rt. hip (buttocks).***
- 4. Multiple contused swelling of size 32 x 18 cm present as Rt. side back of shoulder scapula and chest region.***
- 5. Multiple contused swelling present on Rt. lower limb on lateral aspect.***
- 6. Multiple L/W of size 23 x 4 cm present on Rt. leg on anterior aspect.***
- 7. Contused swelling present on Rt. side chest region.***
- 8. L/W of size 5 x 2 cm present on left leg 8 cm above ankle joint on anterior aspect.***
- 9. Multiple abrasion with L/W present on left palm on base of finger between left middle ring and little finger.***
- 10. Multiple L/W with contused swelling of 13 x 9 cm present at left fore arm with elbow joint with underlined bone fracture#.***
- 11. Contused swelling present on whole left arm on lateral aspect.***
- 12. Multiple contused swelling of size 18 x 18 cm present on left buttock region.***
- 13. Contused swelling of size 14 x 9 cm present on left leg on lateral aspect.***

***14. Contused swelling present on whole chest region.***

***15. Abrasion with L/W of size semi circular from 3 'o' clock to 9 'o' clock position of depth 2 cm on anal region."***

***"Instruction - Lacerated."***

***"Internal Examination -***

***Lacerated with clotted blood."***

***"Ribs and Chest wall -***

***Rt. side rib 2, 3, 4, 5, 6, 7, 8 fracture #.***

***Left side rib 3, 4, 5, 6, 7 are fracture#."***

7. During course of investigation, Investigating Officer examined first informant and the following witnesses under Section 161 Cr.P.C.- (1) Rachna, (2) Ahok Tiwari, (3) Amaresh Tiwari, (4) Gendalal Shukla and (5) Bablu Tiwari @ Premdutt Tiwari. Witnesses so examined have supported the FIR. One Rachna aged about 14 years, Ashok Tiwari, Amaresh Tiwari, Gendalal Shukla and Bablu Tiwari @ Premdutt Tiwari are said to be the eye witnesses of the occurrence who have supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of only two of the named accused Ramlakhan Trivedi and Shivilakhan Trivedi (applicant herein) is established in the crime in question. He, accordingly, submitted the charge sheet dated 02.04.2023 whereby aforementioned named accused have been charge sheeted under Sections 302, 504, 506 IPC.

8. Learned counsel for applicant contends that though the applicant is a named and charge sheeted accused yet he is liable to be enlarged on bail. The statement of the child namely Rachna who is aged about 14 years and is said to be an eye witness of occurrence, was recorded after 37 days of the occurrence i.e. 10.03.2023. Similarly there is delay of more than 1 month with regard to the statement of other witnesses. On the above ground, he submits that the statement of the eye witnesses is not worthy of reliance. There is no explanation in the entire case diary with regard to the delay in recording the statement of eye witness. With reference to the post mortem report of the deceased, he submits that since accused were not armed with any deadly and sharpened edged weapon, therefore, it cannot be said that the intention of the applicant along with other co-accused was to cause the death of the deceased. The occurrence in question has occurred at the spur of the moment on account of

grave and sudden provocation. The same is not the outcome of any calculated mens rea or a pre-planned act of the applicant and co-accused. As such, the crime in question shall be covered under the 4th exception to Section 300 IPC. On the above premise, it is thus contended that the offence in question shall not travel beyond Section 304 IPC i.e. culpable homicide not amount to murder.

9. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 11.02.2023. As such, he has undergone more than 8 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. On the above premise, he submits that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. and the learned counsel for first informant have opposed the prayer for bail. They submit that since applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Criminality committed by the named/charge sheeted is joint and common, therefore, same is incapable of separation or segregation. As such, no exception can be carved out in the case of present applicant. Referring to the post mortem report of the deceased, it is urged that the deceased had sustained as many as 15 ante-mortem injuries on his person, the blood vessels were lacerated, the membrane in the brain were also lacerated and clotted blood was found, ribs no. 2, 3, 4, 5, 6, 7 and 8 on the right side and ribs no. 3, 4, 5, 6 and 7 on the left side of the deceased were found to be broken (fracture). It is thus urged that the act of the applicant along with co-accused is a deliberate act of assault on account of which, the brother of the first informant (deceased) died. On the above premise, it is urged that no sympathy be shown by this Court in favour of applicant.

11. When confronted with above, the learned counsel for applicant could not overcome the same.

12. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, complicity of applicant, accusations made coupled with the fact

that the submissions urged by the learned A.G.A. for State and the learned counsel representing first informant in opposition to the present application for bail could not be dislodged by the learned counsel for applicant, therefore, irrespective of the varried submission urged by the learned counsel for applicant in support of the present application for bail, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

13. As a result, present application for bail fails and is liable to be rejected.

14. It is accordingly **rejected**.

**Order Date :- 17.10.2023**

Vinay