

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39514 of 2023

Applicant :- Neeraj

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Kumar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Sunil Kumar Dwivedi, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant **Neeraj** seeking his enlargement on bail in Case Crime No.64 of 2022, under Section 302 I.P.C., Police Station Gulawathi District Moradabad during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have been occurred on 19.02.2022, a prompt F.I.R. dated 19.02.2022 was lodged by first informant Sushila (Widow of the deceased) and was registered as Case Crime No.64 of 2022, under Section 302 I.P.C., Police Station Gulawathi District Moradabad. In the aforesaid F.I.R., applicant-Neeraj has been nominated as solitary named accused.

5. The gravamen of the allegations made in the FIR is to the effect that marriage of the daughter of first informant was solemnized with applicant Neeraj in the year 2017. Subsequently, differences emerged in between the parties on account of marital discord. The F.I.R. further records that named accused assaulted the daughter of the first informant with surgical blade. She ultimately succumbed to death.

6. After above-mentioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have supported the F.I.R. The surgical blade which was used in the commissio of the crime was

recovered from the person of applicant. On the basis of above and other material collected by the Investigating Officer he came to the conclusion that complicity of applicant is established in the crime in question. Accordingly, Investigating Officer submitted the charge sheet dated 26.04.2022, whereby, applicant has been charge sheeted under Section 302 I.P.C.

7. Learned counsel for applicant submits that though applicant is a named and charge sheeted accused yet he is liable to be enlarged on bail. As per the charge sheet 19, witnesses have been nominated. Upto this stage, 7 prosecution witnesses have been examined including PW-7 Rubi, the eye-witness of the occurrence. However, the said witness has not supported the F.I.R. as is evident from her statement in chief, copy of which is on record at page 68 of the paper book.

8. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 19.02.2022. As such, he has undergone more than 1 year and 7 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. Therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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 cooperate with the trial.

9. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge-sheeted accused therefore, he does not deserve any indulgence by this Court. According to the learned A.G.A. there are nine prosecution witnesses of fact nominated in the above charge sheet. However, as per the statement of PW-9, the innocence of the applicant cannot be conclusively inferred. Learned A.G.A. further contends that even though this Court is superior Court but dictates of prudence require that the Court hearing the bail application even if a superior Court should not evaluate the evidence which has emerged during the pendency of trial. Any observations made by this Court may prejudice the prosecution or evidence. He further contends that as per the statement in chief of PW-9, it cannot be conclusively concluded that the applicant is innocent. On the above conspectus, learned A.G.A. contends that no good or sufficient ground has been made out to enlarge the applicant on bail. As such, the bail application of applicant is liable to be rejected.

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

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, complicity of applicant, gravity and nature of offence and accusation made coupled with the fact that the recovery of weapon of assault was made from the present of applicant, witnesses examined during the course of investigation have supported the F.I.R., the injury sustained by the deceased could have been caused by the weapon of assault recovered from the person of present applicant, upto this stage, one of the eye-witness of the occurrence has been examined before court below, however, as per the statement of said witness the innocence of the applicant cannot be fully inferred, the submission urged by the learned A.G.A. in opposition to the present application for bail could not be dislodged by the learned counsel for applicant, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

12. In view of above, the bail application fails and is liable to be rejected.

13. It is, accordingly **rejected**.

Order Date :- 31.10.2023

Imtiyaz