

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39576 of 2023

Applicant :- Anuj

Opposite Party :- State of U.P.

Counsel for Applicant :- A.Z.Khan

Counsel for Opposite Party :- G.A.,Avinash Pandey

Hon'ble Sameer Jain,J.

1. The instant bail application is listed today before this Bench after nomination by Hon'ble the Chief Justice vide order dated 16.10.2023.
2. Heard Sri A.Z. Khan, learned counsel for the applicant and Sri Shatrughan Yadav, learned AGA for the State.
3. The instant bail application has been filed on behalf of the applicant seeking release on bail in Case Crime No. 42 of 2023 under sections 147, 148, 323, 504, 302 IPC, Police Station Nagal, District Saharanpur.
4. FIR of the present case was lodged against the applicant and four others and according to the FIR, applicant and other accused persons assaulted the deceased through wooden sticks and iron rods and they even tried to strangle him and due to assault, the deceased sustained injuries and when informant and others took him to the hospital, doctor declared him dead.
5. Learned counsel for the applicant submits, the alleged incident is said to have taken place on 12/2/2023 at 5:00 PM in the evening but in spite of that, FIR of the present case was lodged on 13/02/2023 at about 15:35 PM i.e. after 22 hours. He further submits on the basis of general allegation, applicant has been made accused in the present matter along with four others.
6. He next submits, after the inquest when local police insisted family members of the deceased including the informant for lodging the FIR then also they did not lodge the same and subsequently, on the next day in the afternoon, FIR of the present case was lodged and this fact is evident from parcha no.1 of case diary dated 13/02/2023 which has been annexed as Annexure No.

3 to the affidavit. He further submits that this fact clearly shows that after cooking up a false story, applicant and his family members have been implicated in the present matter after 22 hours.

7. He further submits that although as per the allegations, the incident occurred near the fair price shop of the accused persons but, in fact, the incident occurred at some other place and that is the reason after the incident when informant and others arrived at the spot, they took the disease to the hospital where he was declared dead and this fact is even evident from the FIR.

8. He further submits although bail application of co-accused Vedram has been dismissed by this Court vide order dated 17/7/2023 passed in Crl. Misc. Bail Application No. 27312 of 2023 but law is settled that there can be no parity of bail rejection order. He further submits that at the time of hearing of the bail application of co-accused Vedram, parcha no.1 of case diary dated 13/02/2023 could not be placed before this court.

9. He further submits applicant is not having any criminal history and he is in jail since 9/4/2023 i.e. for more than six months.

10. *Per contra*, learned A.G.A. as well as counsel appearing on behalf of the informant opposed the prayer for bail and submit from perusal of the postmortem report of the deceased, it appears that he sustained as many as 16 injuries and applicant along with four others has been named in the FIR and after considering the facts and circumstances of the case, bail application of co-accused Vedram was dismissed by this court but both the counsels could not dispute the fact that at the time of disposal of the bail application of co-accused Vedram, parcha no.1 of case diary dated 13/02/2023 could not be produced before this court and from perusal of the same, it is reflected that in spite of repeated requests made by the police, family members of the deceased did not lodge the FIR of the present case and they lodged the same after almost more than 22 hours of the incident in question.

11. I have heard all sides and perused the record of the case.

12. However, from the record, it is reflected that applicant was named in the FIR along with four others and postmortem report of the disease also suggest that he sustained as many as 16 injuries but the incident is said to have taken place on 12/2/2023 at about 5:00 PM in the evening but FIR could only be lodged on 13/2/2023 at 15:35 hours i.e. after 22 hours from the alleged time of the incident. Further, from perusal of Annexure No.3 i.e.

parcha no.1 of case diary dated 13/02/2023, it reflects that after inquest, the police insisted the family members of the deceased to lodge the FIR but in spite of repeated requests made by the police, none of them lodged the FIR and the same could only be lodged on the next day at about 3:25 PM in the afternoon.

13. From the record, it is further reflected that although as per the allegations, the incident is alleged to have occurred at the fair price shop of the accused persons but in the FIR, it has been specifically mentioned that informant himself along with others has taken the diseased to the hospital and from the record, it also reflects that he has taken the diseased to the hospital even in the presence of police, therefore, I find force in the argument advanced by learned counsel for the applicant that if applicant and other accused persons would have participated in the incident in question and they were present at the fair price shop and police also had arrived at the spot, the police would have definitely arrested them or taken some action against them.

14. Further, however, bail application of co-accused Vedram has been dismissed by this Court and as far as allegations are concerned, case of the applicant is at par with him but the law is settled that there can be no parity of bail rejection order and the point which was raised by learned counsel for the applicant in the instant bail application could not be placed before this Court at the time of hearing of the bail application of co-accused Vedram.

15. Further, from the record it also reflects that on the basis of general and anonymous allegations, applicant has been made accused along with four others and there also appears to be major differences in the injury noted in the inquest report and the postmortem report.

16. Further, applicant is not having any previous criminal history to his credit and he is in jail since more than six months.

17. Therefore, considering the facts and circumstances of the case as discussed above, I am of the view that applicant is entitled to be released on bail.

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

19. Let the applicant **Anuj** 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.

20. In case of breach of any of the above conditions, the prosecution will be at liberty to move an application before this Court for cancellation of bail of the applicant.

21. 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 :- 26.10.2023

Madhurima