

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47325 of 2022

Applicant :- Ram Pravesh Thakur

Opposite Party :- State of U.P.

Counsel for Applicant :- Kameshwar Singh, Narendra Deo Upahdayay, Vinay Bhushan Upadhyay

Counsel for Opposite Party :- G.A., Pramod Kumar Gupta

Hon'ble Sameer Jain, J.

1. Heard Sri Kameshwar Singh, learned counsel for the applicant, Sri Rajvendra Singh, Advocate holding brief of Sri Pramod Kumar Gupta, learned counsel for the informant and Dr. S.B. Maurya, learned AGA-I for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 191 of 2022, Case No. 4297 of 2022, under Sections 147, 148, 149, 323, 504, 506, 308, 304 IPC, Police Station Garhwar, District Ballia during pendency of the trial.

3. FIR of the present case was lodged against applicant and seven others and according to the FIR applicant and other accused persons made assault through their respective weapons upon father, uncle and mother of the informant and due to the assault made by them, they sustained injuries and subsequently the uncle of the informant Raj Mangal succumbed to his injuries.

4. Learned counsel for the applicant submitted that on the basis of general allegation applicant has been made accused along with seven others in the present case and none of the alleged eye witnesses attributed any specific role to him and they also repeated the version of the FIR and assigned only general role to all the accused persons including applicant but after two weeks when the statement of two injured i.e. parents of the informant were recorded under Section 161 Cr.P.C. then although they also initially stated that all the accused persons through their respective weapons assaulted them but subsequently they stated in their statement that applicant was having rod in his hand and he gave repeated blows on the head of the deceased but post mortem report of the deceased falsifies the statement of the injured.

5. He further submits that as per post mortem report deceased sustained as many as six injuries but except the injury no.1, who is on forehead, all other injuries were on non vital parts and as deceased sustained only single injury on his head, therefore, this fact belies the statement of the injured witnesses, who categorically stated that repeated blows from the rod was given by the applicant on the head of the deceased. He further submits that all the accused persons have already been released on bail by the co-ordinate Bench of this Court. He next submits that applicant is facing trial under Section 304 IPC and he is not having any criminal history and in the present matter he is in jail since 26.06.2022.

6. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submits that case of applicant is distinguishable from the rest of the accused persons as both the injured categorically stated that applicant is the person who gave rod blow on the head of the deceased and from the perusal of the post mortem report it appears that deceased sustained as many as six injuries.

7. They further submits that although it appears from the post mortem report that deceased sustained as many as six injuries and injury no.1 was on his head but after injury no.6 the autopsy surgeon found that after opening the scalp contusion was all over the head and fracture was present and this fact clearly suggests that deceased sustained number of injuries on his head and injury no.1 is surgical stitched wound and it cannot be said that deceased sustained only single injury on his head.

8. Learned counsel for the informant further submits that as specific role of causing head injury to the deceased has been attributed to the applicant, therefore, applicant should not be released on bail.

9. I have heard learned counsel for the parties and perused the record of the case.

10. However, in the FIR and the statements of the witnesses only general allegations have been levelled against the applicant and other accused persons, who were total eight in numbers and all the remaining accused persons have been released on bail but it appears from the statements of both the injured witnesses, namely Shivmangal and Rambha, the parents of the informant that applicant is the person who gave rod blow on the head of the deceased although they stated that he gave repeated blows on the

head of the deceased and from perusal of the post mortem report also, it appears that only one injury was noted by the doctor on the head of the deceased but from perusal of the post mortem report it further reflects that the injury which was on the head of the deceased was surgical wound of 8 cm and in the post mortem report doctor after opening the skull found that there was contusion all over the head. Primary injury report of the deceased is not on record. Therefore, argument advanced by learned counsel for the informant that it may be case of multiple head injury, cannot be completely ruled out at this stage.

11. Therefore, considering the facts and circumstances of the case, particularly the fact that injured witnesses stated that applicant caused head injury to the deceased due to which he died, in my view, applicant is not entitled to be released on bail at this stage.

12. Accordingly, the instant bail application is rejected at this stage.

13. 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 :- 27.10.2023

AK Pandey