

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49846 of 2022

Applicant :- Saleem

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajiv Kumar Pandey, Kamal Dev Singh Chanchal, Ruhi Yadav

Counsel for Opposite Party :- G.A., Bipin Kumar

Hon'ble Sameer Jain, J.

1. None appeared on behalf of the informant even in revised call, however, learned AGA for the State is present.
2. Heard Ms. Ruhi Yadav, learned counsel for the applicant and Sri Ghanshyam Mishra, learned brief holder for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 49 of 2022, under Sections 323/34, 302/34 IPC, Police Station- Rorawar, District- Aligarh, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and three others and according to the FIR, marriage of the sister of the informant was performed with co-accused Rashid i.e. brother of the applicant and some matrimonial dispute arose between both of them and thereafter she started living in the house of her brother i.e. informant and on 13.02.2022 at about 9:30 p.m. in the night co-accused Rashid arrived at the house of the informant alongwith applicant and two others and thereafter applicant, co-accused Farukh and Shamshad caught hold the brother of the informant and co-accused Rashid inflicted knife injury on his neck and due to the assault made by co-accused Rashid, the brother of the informant sustained injuries on his neck and died.
5. Learned counsel for the applicant submitted that applicant is innocent and only being brother of co-accused Rashid, he has been made accused in the present matter and he was having no occasion to accompany him at his wife's paternal home.
6. He further submitted that even according to the prosecution case, applicant did not cause any injury to the deceased and co-

accused Rashid inflicted the knife injury on his neck and allegation against the applicant is that he alongwith two others caught hold the deceased.

7. He further submitted that applicant is not having any criminal history and he is in jail since 15.05.2022 i.e. for last more than one and half years.

8. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is the brother of co-accused Rashid, therefore, at this stage, it cannot be said that he was not having any occasion to accompany him upto the paternal home of the wife of co-accused Rashid.

9. He further submitted that there are eye-witnesses account and according to them, applicant alongwith two others caught hold the deceased and thereafter co-accused Rashid inflicted knife injury to him. He further submitted that post-mortem report of the deceased also corroborates the allegation levelled against the accused persons.

10. He further pointed that bail application of co-accused Farukh has been dismissed by this Court on 25.05.2023 and there is no occasion for this Court to deviate from its earlier opinion and, therefore, considering the facts and circumstances of the case, applicant should not be released on bail.

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

12. However, from the record, it reflects that role of causing knife injury to the deceased has been attributed to co-accused Rashid but it is a case in which there are eye-witnesses account and according to eye-witnesses, applicant and two others including co-accused Farukh caught hold the deceased and thereafter co-accused Rashid inflicted knife injury to him. However, role of catching hold has been assigned to the applicant but in case of knife injury the role of catching hold is having its own importance.

13. Further, bail application of similarly placed co-accused Farukh has been rejected by this Court on 20.05.2023. However, this Court is conscious with the fact that there is no parity of bail rejection order but from the perusal of the bail rejection order of co-accused Farukh dated 25.05.2023, it appears that it is a reasoned order and there is no occasion for this Court to deviate from its earlier opinion.

14. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail.

15. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **rejected**.

16. 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 :- 5.12.2023

KK Patel