Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50610 of 2022

Applicant :- Jagdeep @ Happy
Opposite Party :- State of U.P.
Counsel for Applicant :- Rewti Raman Patel
Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Rewati Raman Patel, learned counsel for the applicant and Sri Ravi Kant Kushwaha, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 140 of 2022, under Section 302 IPC, Police Station- Narora, District- Bulandshahar, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 11.06.2022 at about 19:21 hours against applicant and two others and one unknown person and according to the FIR, on 10.06.2022 when brother of the informant was returning alongwith his wife from the field then on the way applicant and other accused persons intercepted them and made assault.

4. It is further mentioned in the FIR that applicant and co-accused Durgesh used bricks and co-accused Rajesh alongwith his unknown associate made assault upon the brother of the informant through wooden stick and his wife anyhow managed to escape from the spot and informed about the incident at her home and thereafter family members alongwith wife of the deceased ran towards the spot and found that brother of the informant was not present at spot and blood was present there.

5. It is further mentioned in the FIR that after search, the body of the deceased was found near the tube-well in the 'haudi'. It is further mentioned in the FIR that the brother of the informant had already died and he sustained serious injuries on his face and head.

6. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless

and applicant and deceased sides were having inimical terms and only due to animosity, applicant has been made accused in the present matter. He further submits, from the perusal of the FIR, it appears that on 16.06.2022, when informant and others arrived at spot then they found the dead body of the deceased near the tube-well in the 'haudi' but from the inquest report, which has been annexed at page no. 28 of the paper book, it appears that one Vinit informed the police that dead body of the deceased is lying in the forest and on his information, after recovering the dead body from the forest, inquest was conducted on 11.06.2022 at 11:00 a.m. and after six hours from the inquest, FIR of the present case was lodged.

7. He further submitted that even according to the prosecution, the incident occurred on 10.06.2022 in the night and FIR was lodged next day at about 7:21 p.m. and this inordinate delay in lodging of the FIR also suggests that due to previous enmity after more than 18 hours of the incident, FIR of the present case was lodged. He further submitted that even enmity has been admitted by the wife of the deceased herself in her statement recorded under Section 161 Cr.P.C.

8. He further submitted that even statement of the alleged eye-witness i.e. wife of the deceased was recorded on 07.07.2022 i.e. almost after about a month and all these facts clearly suggests that actually nobody could witnessed the real incident and after more than 18 hours, on the basis of false allegation, due to previous enmity, applicant and others have been made accused in the present matter.

9. He further submitted that applicant is in jail since 17.06.2022 i.e. for last more than one and half years.

10. He further submitted that no lethal weapon has been assigned to the applicant and it is alleged that applicant used bricks in the crime, therefore, considering the facts and circumstances of the case, he should be released on bail.

11. Per contra, learned AGA however, opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

13. From the record, it reflects that applicant was named in the FIR

alongwith others and wife of the deceased claimed herself to be eye-witness but FIR of the present case was lodged after 18 hours next day. Further, even statement of sole eye-witness i.e. wife of the deceased appears to be recorded by the Investigating Officer during investigation after almost one month and further, even in her statement, she admitted the enmity existing between both the sides.

14. Further, in the FIR, it is specifically mentioned that when after receiving information of the incident from the wife of the deceased, informant and others alongwith her arrived at spot then they found that dead body of the deceased was lying near tube-well in the '*haudi*' (tub) but from the perusal of the inquest report of the deceased, it appears that dead body of the deceased was recovered from a forest on the information furnished by one Vinit on 11.06.2022 at about 7:21 p.m. and inquest was conducted on 11.06.2022 at about 11:00 a.m. in the morning and therefore, inquest report of the deceased prima facie, cast doubt on the story narrated in the FIR.

15. Further, from the record, it appears that deceased was having criminal history of 10 cases including one case of 302 IPC, in which, he had already convicted.

16. Further, applicant is in jail in the present matter since 17.06.2022 i.e. for last more than a year and even no lethal weapon has been assigned to the applicant and it is alleged that he used bricks in commission of the alleged crime.

17. Therefore, considering the facts and circumstances of the case discussed above, in my view applicant is entitled to be released on bail.

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

19. Let the applicant- **Jagdeep @ Happy** 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 condition, the prosecution will be at liberty to move an application before this Court for cancellation of the 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 :- 6.12.2023
KK Patel

Digitally signed by :-
KRISHN KANT PATEL
High Court of Judicature at Allahabad