Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44091 of 2023

Applicant :- Nandlal Kushwaha
Opposite Party :- State of U.P.
Counsel for Applicant :- Amit Daga,Vipul Kumar Singh
Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary,J.

1.Heard Sri Amit Daga, learned counsel for the applicant, learned counsel for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant **Nandlal Kushwaha,** seeking enlargement on bail during trial in connection with Case Crime No. 177 of 2022, under sections 302. 307. 352, 504. 506, 34 IPC, registered at P.S.- Raksha, District- Jhansi.

3.The prosecution story in brief is that the informant along with his family members has gone with the tractor of Pramod behind the field of Imiliya Petrol Pump on 22.06.2022 at about 2.00 P.M. for cultivation. At the same time uncle of the informant Ram Singh along with his sons Mithun and Nand Lal came with an axe and lathi and denied to cultivate the field and after some hot talk beaten the persons of the applicant's side. On making hue and cry some persons came for rescue but assailants also rushed them and thereafter the villagers informed the police. On hearing the sairen, the accused persons ran away with the place of incident. During treatment the injured Kamal Singh has died in medical collage, Jhansi.

4.The submission advanced by learned counsel for the applicant is that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. On the information of Mukhbir Khaas the applicant was arrested and confessed his involvement but the injured Kamal Singh (sine deceased) has not assigned any specific weapon in the hands of the applicant nor assigned any specific role of causing injury upon the injured by the applicant (**Ammexire-11 of the affidavit filed in support of the bail application)**.

5.On the other hand the Ward boy of the medical collage, Jhansi stated that on the day of incident the deceased Kamal Singh was brought dead and I.O. conducted the inquest report of the dead body Kamal Singh **(Annexure-13 of the affidavit)**. Thereafter body was sent for post mortem examination in which the cause of death is opined as ante mortem injuries.

6.That except examining aforesaid witnesses I.O. did not examine even a single independent public person of the vicinity who supports the case of prosecution and pointed out involvement of applicant in alleged crime nor collected any evidence which goes to show that applicant was having motive

7.It is nowhere specified by any of the prosecution witnesses including injured witnesses, that the accused applicant hit the deceased nor injured person.

8.Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It is further contended by learned counsel for the applicant that the applicant is languishing in jail since 25,06.2022 having no criminal history.

9.Per contra, learned AGA for the State has opposed the prayer for bail but admitted the fact that the deceased was brought dead to the hospital nor any statement of the independent witness has been recorded.

10. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

11. Let the applicant- **Nandlal Kushwaha,** be released on bail in the aforesaid case crime number on furnishing a personal bond and two **heavy** sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(V) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

12. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

13 The bail application is **allowed**.

Order Date :- 17.10.2023

RPD

Digitally signed by :-
RATAN PRAKASH DWIVEDI
High Court of Judicature at Allahabad