

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43508 of 2023

Applicant :- Shahanshah And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Ashok Kumar Srivastava, learned counsel for the applicants and Sri Kunwar Tejendra Bahadur, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicants on bail in Case Crime No. 57 of 2023, under Sections 147, 149, 304, 323, 504, 506 IPC, Police Station- Karma, District-Sonbhadra, during pendency of the trial in the court below.
3. FIR of the present case was lodged against the applicants and six others and some unknown persons and according to the FIR, applicant and other accused persons made assault through lathi-danda and sabbal and due to assault made by them number of persons sustained injuries from the side of informant and from the side of applicants also some persons sustained injuries.
4. Learned counsel for the applicants submitted that initially FIR was lodged under Sections 147, 323, 504, 506 IPC but after the death of one injured Ram Bahal, case was converted under Section 304 IPC.
5. He further submitted that on the basis of general and omnibus allegation, applicants have been roped in the present matter along with several other accused persons and from the perusal of the post-mortem report of the deceased, it appears that he sustained three injuries and out of three injuries, two injuries were on non vital parts and one bruise was found on his chest and according to the autopsy surgeon, deceased died due to shock and hemorrhage due to ante-mortem injuries and there is no evidence on record, which can show that applicant caused any of the injury to the deceased.

6. He further submitted that although, in the incident from the side of informant number of persons sustained injuries but it is a case of free fight and from the side of applicants also several persons sustained injuries.

7. He further submitted that bail application of co-accused Sani Deol, Rajesh, Ajay and Vijay who were also named in the FIR have already been bail and their bail orders have been appended alongwith the instant bail application and case of applicants is at par with them.

8. He further submitted that applicants are not having any criminal history and they are in jail since 10.06.2023.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail but could not dispute the fact that similarly placed number of co-accused persons have already been released on bail.

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

11. From the record, it reflects that initially FIR was lodged under Sections 147, 323, 504, 506 IPC but after the death of one injured Ram Bahal, case was converted under Section 304 IPC. As per the allegation, applicant and several other persons made assault but from the record, it also reflects that from the side of applicants also some persons sustained injuries and this fact has been admitted by the informant himself in the FIR.

12. Further, from the perusal of the post-mortem report of the deceased, it appears that he sustained three injuries and out of three injuries, two injuries were on his non vital parts and one bruise was found on his chest and there is no evidence on record, which can show that applicants caused these injuries to the deceased and from the record, it appears that on the basis of general and omnibus allegation, applicants have been made accused in the present matter along with other accused persons.

13. Further, similarly placed co-accused have already been released on bail and case of applicant is at par with them.

14. Therefore, considering the facts and circumstances of the case discussed above, in my view applicants are entitled to be released on bail.

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

16. Let the applicants- **Shahanshah and Angad**, 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 applicants shall appear before the trial court on the dates fixed, unless their personal presence is exempted.

(ii) The applicants shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicants shall not indulge in any criminal and anti-social activity.

17. 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 applicants.

18. 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 :- 19.10.2023

Ankita