

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 43586 of 2023

**Applicant :-** Vimal Prasad Prajapati And Another

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Ankit Kapoor

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain,J.**

1. Heard Sri Ankit Kapoor, learned counsel for the applicants and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicants on bail in Case Crime No. 80 of 2023, under Sections 147, 323, 504, 506, 304 IPC, Police Station- Jansa, District-Varanasi, during pendency of the trial in the court below.

3. FIR of the present case was lodged against applicants and seven others and according to the FIR, on 23.04.2023 due to property dispute, applicants and other accused persons assaulted the *jeth* of the informant.

4. Learned counsel for the applicants submitted that initially FIR of the present case was lodged under Sections 147, 323, 504, 506 IPC but after the death of the *jeth* of the informant, case was converted under Section 304 IPC.

5. He further submitted that on the basis of general and omnibus allegation due to enmity, applicants have been made accused in the present matter along with seven others and it appears from the FIR that informant is not an eye-witness but when her statement was recorded under Section 161 Cr.P.C. then she claimed herself to be an eye-witness but in her statement recorded under Section 161 Cr.P.C. she also attributed general role to all the accused persons including applicants.

6. He further submitted that as per the statement of the informant recorded under Section 161 Cr.P.C., all of sudden some dispute arose between accused persons and deceased and thereafter accused persons after taking wooden stick from the field made assault upon the deceased and this fact clearly suggests that there

was no intention of the accused persons to cause death of the deceased. He further submitted that the alleged weapon used in the crime also suggests that there was no intention to cause the death of the deceased.

7. He further submitted that bail applications of co-accused Prakash Prajapati and Dhararidhar Prajapati have already been allowed by co-ordinate Bench of this Court. He placed their bail orders during the course of argument, which are taken on record and marked as 'A'. He further submitted that 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 03.05.2023.

9. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the fact that bail applications of co-accused Prakash Prajapati and Dhararidhar Prajapati have already been allowed by co-ordinate Bench of this Court and case of applicants is at par with them.

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

11. Considering the argument advanced by learned counsel for the applicants and the fact that bail applications of co-accused Prakash Prajapati and Dhararidhar Prajapati have already been allowed by co-ordinate Bench of this Court and case of applicants is at par with them, in my view, applicants are also entitled to be released on bail.

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

13. Let the applicants- **Vimal Prasad Prajapati** and **Lav Prajapati** 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 his 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 him 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.

14. 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.

15. 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 :- 12.10.2023**

KK Patel