

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45274 of 2023

Applicant :- Akshay

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Mullick

Counsel for Opposite Party :- G.A.,Saqib Meezan

Hon'ble Sameer Jain,J.

1. Sri Saqib Meezan, Advocate filed his power on behalf of the informant which is taken on record.
2. Heard Sri Anil Mullick, learned counsel for the applicant; Sri Saqib Meezan, learned counsel for the informant and Sri Manoj Kumar Singh, 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. 129 of 2023, under Sections 147, 148, 149, 323, 504, 506, 307, 302, 34 IPC, Police Station Chaprauli, District Baghpat, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant and nine others and according to the FIR on 23.5.2023 at about 10 pm in night when informant alongwith his three brothers were going then applicant and other accused persons surrounded them and they were having sharp edged weapon in their hands and they assaulted upon them and due to the assault made by them, brother of the informant Gajender @ Phata, Ashwini and Bhudev sustained injuries and due to the injuries subsequently Gajender @ Phata died.
5. Learned counsel for the applicant submitted that on the basis of general and omnibus allegation applicant has been roped in the present matter alongwith 9 others and no specific allegation has been levelled against the applicant either in the FIR or in the statement of the witnesses including statement of the alleged injured witnesses Ashwini and Bhudev.
6. He further submitted that from perusal of the post mortem report of the deceased, it appears that he sustained two injuries and one was on his chest and one injury was on his index finger and there

is nothing on record which can show that applicant is the author of those injuries.

7. He further submitted that although one injured sustained five injuries and another one sustained two injuries but both these injured also made general allegations against the applicant.

8. He further submitted that during investigation, Investigating Officer procured one video of the incident which is the part of the case diary and on the basis of the alleged video, statements of three witnesses were recorded which have been annexed as annexure-13 of the affidavit and when their statements were recorded then they did not even disclose the name of the applicant. He further argued that neither applicant was seen in the video clip and this fact clearly suggests that injured witnesses and the informant only to increase the number of accused persons nominated the applicant in the FIR and in their statements as one of the accused and video of the incident and statement of the alleged witnesses Jagat Singh and Mohit Khokhar and Gaurav Malik belies their version.

9. He further submitted that video of the incident clearly suggests that applicant did not participate in the incident.

10. He further submitted that applicant is having no previous criminal history and he is in jail in the present matter since 2.6.2023.

11. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that informant himself was one of the eye witnesses and from the FIR and his statement, complicity of the applicant is evident.

12. They further submitted that even injured witnesses Ashwini and Bhudev also stated that applicant actively participated in the incident alongwith nine others but both the counsels could not dispute the fact that in the alleged video of the incident, applicant is not visible and the witnesses who after perusing the video of the incident gave statements, they also did not state that applicant also participated in the incident.

13. However, learned counsel for the informant submitted that possibility, at this stage, cannot be ruled out that the alleged video did not cover the complete incident, therefore, on the basis of video of the incident, the statements of two injured witnesses should not be disbelieved, at this stage.

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

15. Although applicant is named in the FIR and informant and two injured Ashwini and Bhudev also stated that he also participated in the incident alongwith nine others but from perusal of the video of the spot which was recovered during investigation by the Investigating Officer, it reflects that applicant was not the person who inflicted injuries either to the deceased or injured Ashwini and Bhudev and it appears that entire incident has been captured in alleged video and in entire video, applicant is not visible.

16. Further, however as per allegation total 10 persons made assault including applicant but only one fatal injury on the chest was sustained by the deceased and only general role has been attributed to all the accused including applicant.

17. Further, although two injured sustained total seven injuries and they also stated against the applicant and others but they also made only general and omnibus allegations against the applicant and their, statements do not find support from the video of the incident and from statements of witnesses recorded on the basis of the video of the alleged incident.

18. Further, applicant is having no criminal history and he is in jail in the present matter since 2.6.2023.

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

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

21. Let the applicant-**Akshay**, 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.

22. 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.

23. 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 :- 27.10.2023

Ankita