

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44568 of 2023

Applicant :- Pankaj Tiwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Samiuzzaman Khan, Saddam Husain

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Mohd. Samiuzzaman Khan, learned counsel for the applicant and Sri Amarnath Vishwakarma, learned brief holder for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 169 of 2023, under Sections 326-A, 323, 504, 452, 427 IPC, Police Station- Bidhnu, District- Kanpur Nagar, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant and two others and according to the FIR, applicant and two other accused persons on 25.04.2023 at about 8:40 p.m. started abusing and assaulting the informant and thereafter co-accused Deepu Tiwari threw Acid upon the informant and his son and due to that informant, his son and 2-3 other persons received drops of Acid and informant and his son Ananya Vajpeyee sustained burn injuries on their faces.
4. It is further mentioned in the FIR that when informant ran inside the house then applicant and two others entered in his house and made assault.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and only due to enmity, which is itself mentioned in the FIR, applicant has been made accused in the present matter.
6. He further submitted that when the statements of the informant and other witnesses were recorded under Section 161 Cr.P.C. then they changed the entire version and stated that applicant is the persons, who from the roof of the house threw the Acid and due to

that informant and his son sustained burn injury. He further submitted that this fact clearly suggests that totally on the basis of false allegation, applicant has been made accused in the present matter.

7. He further submitted that from the perusal of the injury report of the injured persons, it appears that they sustained superficial burn injuries and these injuries, even as per the statement of the wife of the informant, were sustained by the Acid, which was used to clean toilets and, therefore, it appears that any how in the home informant sustained these injuries and only due to enmity, applicant has been made accused in the present matter.

8. He further submitted that although, in the FIR there is specific allegation that co-accused Deepu Tiwari threw Acid but in the statement recorded under Section 161 Cr.P.C. informant and other witnesses stated that applicant is the person, who threw Acid and this fact clearly suggests that subsequently only with intention to implicate the applicant, the role of throwing Acid has been attributed to the applicant.

9. He further submitted that applicant is not having any criminal history and he is in jail since 27.04.2023.

10. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case of Acid burning and from the perusal of the statement of the doctor, it appears that informant and his son sustained burn injuries, which was caused by chemical but could not dispute the fact that in the FIR there is specific allegation that co-accused Deepu Tiwari threw the Acid but in the statement recorded under Section 161 Cr.P.C. informant and other witnesses changed their version and stated that applicant is the person, who threw Acid.

11. He further could not dispute the fact that manner of incident also changed entirely in the statements of the informant and other witnesses recorded under Section 161 Cr.P.C. and in the statements recorded under Section 161 Cr.P.C., all the witnesses including informant stated that applicant went on the roof of the house and from the roof he threw the Acid bottle.

12. He further could not dispute the fact that even as per the statement of the doctor, who examined the injured persons, the acid injuries sustained to the injured persons were superficial.

13. I have heard learned counsel for the parties and perused the

record of the case.

14. Although, it appears that it is a case of Acid throwing but there are material contradictions in the story narrated by the informant in the FIR and in the statements recorded under Section 161 Cr.P.C. All the witnesses including son of the informant, who was also one of the injured witnesses changed the version of the FIR in their statements recorded under Section 161 Cr.P.C. In the statements recorded under Section 161 Cr.P.C. although, all the witnesses stated that applicant threw Acid but in the FIR it has been stated that co-accused Deepu Tiwari threw Acid.

15. Further, from the perusal of the statements of the witnesses, it appears that Acid was thrown by the applicant from the roof of the house and as per the statement of the doctor and the medical report, which was produced by learned AGA during the course of argument, it appears that the chemical injuries sustained by the informant and his son were superficial one and appear to be simple in nature.

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

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

18. Let the applicant- **Pankaj Tiwari** 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.

19. 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.

20. 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

KK Patel