

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44152 of 2023

Applicant :- Rohit@ Bhenda And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary,J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the material on record.

2. FIR of the present case was lodged against four persons under Section 304 IPC and according to the FIR, when son of the informant was going to his 'sasural' then on the way nominated accused persons assaulted him and after assault Pankaj, Prabhash and Manmiti has taken the son of the informant to the hospital where doctor declared him dead.

3. Learned counsel for the applicants submitted that admittedly informant of the case was not an eye-witness and subsequently when the statements of the eye-witnesses Pankaj, Prabhash and Manmiti were recorded during investigation then they stated that applicants along with other accused persons involved in the instant crime and they did not state that Deepu participated in the crime. He further submitted that from the statements of alleged eye-witnesses, it appears that during scuffling suddenly deceased fainted and when he was taken to the hospital, he was declared dead and from the statements of eye-witnesses, it could not be reflected that applicants were having any intention to cause his death. He further submitted that from the post-mortem report, it appears that deceased did not sustain any injury and his viscera was preserved and however, till date no viscera report is on record and post-mortem report of the deceased also falsifies the allegation that applicants and other accused persons assaulted the deceased. It is thus contended that the applicants have been falsely implicated in the present case. Several other submissions in order to

demonstrate the falsity of the allegations made against the applicants 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 applicants that they are ready to cooperate with the process of law and shall faithfully make themselves available before the court whenever required and are also ready to accept all the conditions which the Court may deem fit to impose upon them. He next submits that applicants are languishing in jail since 16.05.2023 having no criminal history. Learned counsel has lastly argued that similarly situated co-accused person namely, Jeetu has already been enlarged on bail by co-ordinate Bench of this Court vide order dated 25.08.2023 passed in Criminal Misc. Bail Application No. 37462 of 2023, copy of which is annexed as Annexure-10 to the affidavit accompanying the bail application. It is thus contended that the applicants are also entitled for bail on the ground of parity

4. Learned AGA for the State could not satisfactorily dispute the aforesaid submissions from the record. He does not contest the criminal history of the applicants as disclosed in the bail application.

5. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence, and all attending facts and circumstances of the case, without expressing any opinion on merits of the case, this Court is of the view that the applicants has made out a case for bail. Hence the bail application is allowed.

6. Let applicants **Rohit @ Bhenda and Rahul** involved in Case Crime No. 53 of 2023, Sessions Trial No. 967 of 2023, under Section 304 B I.P.C., Police Station Kotwali Hathras, District Hathras be released on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

I. The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence and 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.

II. The applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of his absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

III. In case, the applicants misuses the liberty of bail and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

IV. The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against them in accordance with law.

7. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

8. Identity, status and residence proof of the applicants and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 17.10.2023

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