

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53043 of 2022

Applicant :- Vimal @ Bajja @ Bajjad

Opposite Party :- State of U.P.

Counsel for Applicant :- Keshari Nandan Singh, Dinesh Kumar Gupta

Counsel for Opposite Party :- G.A., Vikash Kumar

Hon'ble Sameer Jain, J.

1. Rejoinder affidavit filed on behalf of the applicant is taken on record.
2. Heard Sri Dinesh Kumar Gupta, learned counsel for the applicant, Sri Vikash Kumar, learned counsel for the informant and Sri Amar Nath Vishwakarma, 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. 115 of 2022, under Sections 323, 504, 506, 304 IPC, Police Station- Kurara, District- Hamirpur, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 22.04.2022 under Sections 323, 504, 506 IPC against applicant and according to the FIR, under intoxication applicant made assault upon the father-in-law of the informant through wooden stick.
5. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Sections 323, 504, 506 IPC but after the death of the deceased, case was converted under Section 304 IPC.
6. He further submitted that from the perusal of the post-mortem report of the deceased, it appears that cause of death could not be ascertained and viscera was preserved but till date, viscera report is not on record. He further submitted that even if in the viscera report, poison would be found then also it cannot be said that applicant administered poison to the deceased as neither there is any allegation nor any evidence that applicant administered poison to the deceased.

7. He further submitted that as per the allegation, applicant caused *lathi* injury to the deceased but as deceased did not die due to injury alleged to have been caused by the applicant, therefore, offence under Section 304 IPC is not made out against the applicant.

8. He further submitted that although, applicant is having criminal history about 10 cases but his criminal history has been explained in paragraph no. 25 of the affidavit filed in support of the instant bail application.

9. He further submitted that applicant is in jail since 27.05.2022 i.e. for almost one and half years.

10. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

12. Although, from the record, it reflects that applicant is having criminal history of about 10 cases but it reflects from the record that due to alleged assault made by the applicant, deceased did not die and as cause of death could not be ascertained, therefore, viscera was preserved but till date, viscera report is not on record but there is neither any evidence nor any allegation that applicant administered poison to the deceased.

13. Further, criminal history of the applicant has been explained in the instant bail application and he is in jail for almost one and half years.

14. Further, law is settled, merely on the ground of criminal history, bail application should not be dismissed, if otherwise case of bail is made out.

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

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

17. Let the applicant- **Vimal @ Bajja @ Bajjad** 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.

18. 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.

19. 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 :- 17.10.2023

KK Patel