

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45705 of 2023

Applicant :- Mukesh And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Anand Prakash Pandey, Achyuta Nand Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Anand Prakash Pandey, learned counsel for the applicants, Sri Birendra Pratap Singh, learned AGA for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicants Mukesh and Raju, seeking enlargement on bail during trial in connection with Case Crime No. 134 of 2023, under Sections 147, 148, 149, 323, 307, 302, 504, 506 I.P.C. registered at P.S Iglas, District-Aligarh.
4. Learned counsel for the applicants argued that the applicants along with 11 named accused have been implicated in this case for allegedly causing murder of one person and causing injuries to the five persons. It is argued that deceased suffered two injuries; one lacerated wound on middle of nose 1cmx1cm muscle deep, underlying bone was fractured and bleeding was present. Second, Contusion 2cmx 2cm(Lt.) on temporal region of head underlying bone was fractured. Injureds were advised X-ray but no X-ray was conducted. Out of 13 persons implicated, including the applicants, it is not clear who is author of the two fatal injuries to the deceased. In the statement of the injured no specific role has been assigned to the applicants. The main role has been assigned to the co-accused, Annu. The applicants are in jail since 28.8.2023. Applicants have no criminal history as stated in para-19 of the affidavit. While placing para-17 of the affidavit it is argued that no weapon has been recovered either from the possession of the applicants or their pointing out. It is argued that co-accused Annu @ Anoop Goswami has been granted bail by a co-ordinate Bench of this Court vide order dated 26.9.2023 passed in Criminal Misc. Bail Application No. 41692 of 2023, co-accused Karan, Saurav and

Gauri have been granted bail by a co-ordinate Bench of this Court vide order dated 23.8.2023 passed in Criminal Misc. Bail Application No. 37083 of 2023, co-accused Kanhaiya Lal and Arjun have been granted bail by a co-ordinate Bench of this Court vide order dated 31.7.2023 passed in Criminal Misc. Bail Application No. 33446 of 2023 and co-accused Godhan Lal has been granted bail by a co-ordinate Bench of this Court vide order dated 20.7.2023 passed in Criminal Misc. Bail Application No. 28521 of 2023, copies of the said bail orders have been collectively annexed as annexure no. 7 (page- 62A to 74) of the affidavit.

5. Per contra, learned State counsel opposed the prayer for bail but could not dispute the arguments as aforesaid.

6. After having heard learned counsels for the parties and perusing the record, it is evident that as many as 13 persons including the applicants are named in the F.I.R. In the incident one person died and five persons received injuries who have advised X-ray but no X-ray was conducted. The author of fatal injury caused to the deceased is not known. There is no recovery of any incriminating material either from the possession or pointing out of the applicants. Co-accused Annu @ Anoop Goswami, Karan, Saurav, Gauri, Kanhaiya Lal, Arjun and Godhan Lal have been granted bail.

7. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

8. Let the applicants- Mukesh and Raju, be released on bail in the aforesaid case crime number on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicants will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicants will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the date fixed for evidence when 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.

(iv) The applicants will not misuse the liberty of bail in any manner whatsoever. In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under section 82 Cr.P.C., may be issued and if applicants fail 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 I.P.C.

(V) The applicants shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicants is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against them in accordance with law and the trial court may proceed against them under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicants.

9. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicants to prison.

10. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 30.10.2023

Naresh