

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44223 of 2023

Applicant :- Rajnath

Opposite Party :- State of U.P.

Counsel for Applicant :- Akhilesh Singh, Yogendra Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Akhilesh Singh, learned counsel for the applicant, Sri Shree Krishna Tiwary, learned counsel 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 applicant-Rajnath, seeking enlargement on bail during trial in connection with Case Crime No.256 of 2021 under Sections 147, 302, 34 IPC, registered at Police Station Barhaj, District Deoria.

4. The FIR of the present case was lodged on 9.12.2021 by Shambhu Rajbhar against the applicant, Satya Narain @ Sattan, Bholu @ Ashutosh and Golu alleging therein that on 8.12.2021 at about 6 p.m. his daughter-in-law Jyoti Rajbhar had gone to ease outside the village. She was accompanied by his daughter Rani Rajbhar, Sonam Rajbhar and Karishma Rajbhar. When they were returning, the accused persons assaulted his daughter-in-law Jyoti Rajbhar with a knife and murdered her. Jyoti daughter of accused Satya Narain had eloped with his son two years ago due to which accused persons were having enmity and have committed the murder.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that in the FIR common and omnibus allegations have been levelled against the applicant and three other accused persons of assault upon Jyoti Rajbhar by a knife. Subsequently Rani Rajbhar, Sonam Rajbhar and Karishma Rajbhar, the three persons who were accompanying the deceased Jyoti Rajbhar were interrogated as witnesses of the incident who have stated that when they were returning back, the accused persons surrounded them after which Bali Ram saw by raising ghunghat of Sonam then Bholu @ Ashutosh caught hold of Jyoti and then all the five accused persons dragged her to a field where Bholu @ Ashutosh armed with a knife assaulted her repeatedly due to which she received injuries. It is argued that the said witnesses have even introduced Baliram as an accused in their statements. The case of the applicant is thus distinguishable with that of co-accused Bholu @ Ashutosh who has been assigned the role of assault upon the deceased with a knife. It is argued that no overt act has been assigned to the applicant. It has also been pointed out that the applicant is not

having any criminal history as stated in para 32 of the affidavit. It is argued that co-accused Golu has been declared juvenile who has been granted bail vide order dated 24.3.2023 passed in Criminal Revision No.2868 of 2022 (Mr 'X' Vs. State of U.P. and another, the said order is annexed as annexure no.8 to the affidavit. The applicant is in jail since 9.12.2021.

6. Per contra learned counsel for the State opposed the prayer for bail and argued that the present matter is a matter of honour killing since the deceased had eloped with the son of the first informant around two years back. The applicant is the chacha of the deceased. He is named in the FIR but could not dispute the argument that the eye-witnesses have assigned the role of assault upon the deceased by a knife to co-accused Bholu @ Ashutosh.

7. After hearing the counsel for the parties and perusing the record, it is evident that three eye-witnesses have assigned the role of assault upon the deceased with a knife to co-accused Bholu @ Ashutosh. In the FIR general and omnibus allegations have been levelled against four accused persons. The witnesses then introduced Baliram also as an accused. The case of the applicant is distinguishable with that of co-accused Bholu @ Ashutosh.

8. 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.

9. Let the applicant-Rajnath, be released on bail in the aforesaid case crime number on 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 applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant 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 applicant shall file an undertaking to the effect that he 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 applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section

174-A I.P.C.

(v) The applicant 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 applicant 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 him in accordance with law and the trial court may proceed against him 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 applicant.

10. 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 applicant to prison.

11. The bail application is allowed.

(Samit Gopal, J.)

Order Date :- 17.10.2023
Gaurav Kuls