

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44987 of 2023

Applicant :- Shabeer

Opposite Party :- State of U.P.

Counsel for Applicant :- Pankaj Kumar Tyagi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Pankaj Kumar Tyagi, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 140 of 2023, under Sections 308, 304, 323, 504 IPC, Police Station Arniya, District Bulandshahr during pendency of the trial.

3. FIR of the present case was lodged against applicant and three others under Sections 323, 504, 308 IPC and according to the FIR applicant and others made assault through wooden sticks and Balkati upon the informant, his son-in-law, his daughter and his wife and due to the assault made by them, they sustained injuries. It is further mentioned in the FIR that son-in-law of the informant Babu sustained serious injuries on his head.

4. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Sections 323, 504, 308 IPC but after the death of the son-in-law of the informant, the case was converted under Section 304 IPC. He further submits that on the basis of general allegation, applicant has been made accused in the present matter along with three others.

5. He further submits that from the perusal of the post mortem report, it appears that deceased died due to head injury but there is no allegation against the applicant that he is the author of the head injury. He further submits that co-accused Shafeik has already been enlarged on bail by the co-ordinate Bench of this Court vide order dated 13.10.2023 passed in Criminal Misc. Bail Application No. 43678 of 2023. He produced the bail order of co-accused during the course of argument, which is taken on record and marked as 'A'.

6. He further submits that case of applicant is at par with co-accused Shafeik. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 20.06.2023.

7. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that on the basis of general allegation applicant has been made accused in the present matter along with others and he is not having any criminal history and co-accused Shafeik has been granted bail and case of applicant is at par with him.

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

9. Considering the fact that on the basis of general allegation, applicant has been made accused along with three others and he is not having any criminal history and co-accused Shafeik has been released on bail and case of applicant is at par with him, in my view, applicant is entitled to be released on bail.

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

11. Let the applicant - **Shabeer** 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.

12. 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.

13. 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 :- 26.10.2023

AK Pandey