

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44917 of 2023

Applicant :- Smt Balwanti

Opposite Party :- State of U.P.

Counsel for Applicant :- Avanish Kumar Srivastava, Anand Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. Learned counsel for the applicant submits that F.I.R. has been lodged against as many as 13 named accused persons including the applicant wherein general role of assault has been assigned to all the accuse persons. Learned counsel further submits that 13 named accused persons have assaulted upon the deceased but the deceased has sustained only two injuries and it is not known as to who is the author of the injury. He further submits that the eye-witness namely Kunj Bihari has also assigned general role of assault to all the accused persons. Learned counsel has next argued that the similarly situated co-accused namely, Smt. Rubi has already been enlarged on bail by co-ordinate Bench of this Court, vide order dated 04.10.2023 passed in Criminal Misc. Bail Application No.41165 of 2023, copy of which order is annexed as Annexure-SA9 to the affidavit accompanying the application. It is thus contended that the applicant is also entitled for bail on the ground of parity. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant 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 applicant that she is ready to cooperate with the process of law and shall faithfully make herself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon her. He next submits that applicant is languishing in jail since 20.07.2023, having no criminal history.

3. Per contra, learned A.G.A. has opposed the prayer for bail of the

applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence.

4. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all 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, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

5. Let applicant **Smt. Balwanti** involved in Case Crime No.437 of 2023 under Sections 147, 148, 149, 302, 307, 342, 323, 504, 506, 34 I.P.C., Police Station Ramgarhtaal, District Gorakhpur, 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 applicant shall file an undertaking to the effect that she 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 applicant shall remain present before the trial court on each date fixed, either personally or through her counsel. In case of her absence, without sufficient cause, the trial court may proceed against her under Section 229-A of the Indian Penal Code.

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

IV. The applicant 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 her bail and proceed against her in accordance with law.

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

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

Order Date :- 1.11.2023
S.Ali