

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45417 of 2023

Applicant :- Omprakash Kashyap @ Prakash

Opposite Party :- State of U.P.

Counsel for Applicant :- Jitendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Jitendra Singh, learned counsel for applicant and Sri Ashutosh Srivastava, learned A.G.A. for the State.
3. The present bail application has been filed by the applicant in Case Crime No.21 of 2020, under Sections 436, 504, 506, 304 I.P.C., Police Station- Mirzapur, District- Shahjahanpur with the prayer to enlarge him on bail.
4. This is the second bail application on behalf of the applicant. The first bail application was rejected as having been rendered infructuous for want of prosecution vide order dated 21.2.2023 of this Court passed in Criminal Misc. Bail Application No.23539 of 2020.
5. As per prosecution story, the applicant is stated to have entered into an altercation with the father of the informant on 24.1.2020, and subsequent to it, owing to the said enmity the applicant is stated to have set the hut of the informant afire, thereby causing burn injuries to the father of the informant, whereby he was admitted at District Hospital Shahjahanpur where he is stated to have succumbed to injuries later on.
6. Learned counsel for the applicant has stated that he has been falsely implicated in the present case. The statement of the informant was recorded in court and he has not supported the prosecution story. Learned counsel has stated that to date only four witnesses have been examined. PW-2 is the doctor who had conducted the postmortem examination of the deceased person, PW-3 is the Investigating Officer and PW-4 has given secondary evidence by proving the FIR.
7. Learned counsel for the applicant has stated that the Magistrate who had recorded the dying declaration of the deceased person is yet to be examined alongwith the doctor

who had given certificate of fitness. Learned counsel has stated that despite the process being issued against them, they are not appearing in court, as such, the applicant is languishing in jail. The fundamental rights of the applicant as enshrined under Article 21 of the Constitution of India stand violated. Learned counsel has further stated that even the dying declaration cannot be relied upon as the victim was not in a condition to depose as he had sustained 70% deep burn injuries. There is no criminal history of the applicant and he is languishing in jail since 1.2.2020.

8. Per contra, learned A.G.A. has vehemently opposed the bail application on the ground that there is a dying declaration duly recorded under the provisions of Section 32 of Indian Evidence Act, whereby even the certificate of the treating doctor has been taken up and the dying declaration was recorded in the form of question and answer, as such, the applicant is not entitled for bail.

9. After hearing learned counsels for the parties and taking into consideration the rival submissions and the fact that only the statement of the Magistrate conducting the dying declaration of the deceased person alongwith the treating doctor remains to be recorded and the trial is almost at its conclusion, I do not find it a fit case for grant of bail to the applicant.

10. The bail application is found devoid of merits and is, accordingly, **rejected**.

11. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously, as early as possible, in view of the principle as has been laid down in the recent judgments of the Apex Court in the cases of ***Vinod Kumar vs. State of Punjab; 2015 (3) SCC 220*** and ***Hussain and Another vs. Union of India; (2017) 5 SCC 702***, if there is no legal impediment.

12. 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 :- 20.11.2023
Vikas

[Krishan Pahal, J.]