

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 45664 of 2023

**Applicant :-** Mohd. Suhail Rahmani

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Rahul Saxena

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain,J.**

1. Sri K.D. Tiwari, Advocate, submitted that he has filed his power today on behalf of the informant in the office of this Court, therefore, his name could not be shown in the cause list.

2. Heard Sri Rahul Saxena, learned counsel for the applicant, Sri K.D. Tiwari, learned counsel for the informant and Sri Jhamman Ram, learned AGA-I for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 156 of 2023, under Sections 304, 323, 504 IPC, Police Station- Kundarki, District- Moradabad, during pendency of the trial in the court below.

4. FIR of the present case was lodged against the applicant and three others and according to the FIR, the younger brother of the informant had gone to the house of Ruksaar, where some dispute with regard to payment arose and applicant and other accused persons assaulted him and due to assault mad by them, he sustained serious injuries.

5. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Sections 308, 323, 504 IPC but after the death of the injured, case was converted under Section 304 IPC.

6. He further submitted that admittedly, informant is not an eye-witness and only eye-witness of the present case is Ruksaar and although, Ruksaar in her statement recorded under Section 161 Cr.P.C. stated that applicant and co-accused Suheb and Imran assaulted the deceased but she in her statement categorically stated that under the sudden provocation, they assaulted him as deceased after entering in her house, was trying to outrage her modesty. He

further submitted that therefore, from the statement of sole eye-witness Ruksaar, it appears that applicant and other accused persons were not having any intention to cause death of the deceased.

7. He further submitted that although, medical report of the deceased shows that he sustained as many as 10 injuries but all the injuries were on his non-vital parts and even post-mortem report of the deceased suggests that he sustained all the injuries on his non-vital parts.

8. He further submitted that only general and onmibus allegation has been levelled against the applicant and two others.

9. He further submitted that applicant is not having any previous criminal history and he is in jail since 09.07.2023.

10. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that from the perusal of the injury report and post-mortem report of the deceased, it appears that he sustained number of injuries and according to the post-mortem report, he died due to ante-mortem injuries but could not dispute the fact that all the injuries were on non-vital parts and sole eye-witness Ruksaar in her statement stated that under the provocation, applicant and her two *devars* assaulted the deceased as deceased forcibly entered in her house and was trying to outrage her modesty.

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

12. It appears that deceased and Rukssar were having some affair and thereafter when marriage of Ruksaar was solemnized with somebody else then it was settled between both the sides that applicant and Rukssar will not meet with each other but on the date of incident, deceased forcible entered in her house and was trying to outrage her modesty and when applicant and two others, who were her *devars*, came to know this fact then they after entering in the room of Ruksaar, made assault upon the deceased and in the present matter Rukssar is the sole eye-witness and according to the statement of Ruksaar, under the sudden provocation, applicant and her two *devars* assaulted the deceased.

13. Further, although, from the medical report and post-mortem report of the deceased, it appears that he sustained several injuries on his body but all the injuries were on non-vital parts and only

general and omnibus allegation has been levelled against the applicant.

14. Further, applicant is not having any criminal history and he is in jail since 09.07.2023.

15. Therefore, considering the facts and circumstances of the case discussed above, in my view applicant is entitled to be released on bail.

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

17. Let the applicant- **Mohd. Suhail Rahmani** 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.

18. 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.

19. 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 :- 30.10.2023**

**KK Patel**