

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46517 of 2023

Applicant :- Sonu Mishra And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Vashishtha Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Vashishtha Tiwari, learned counsel for the applicants and Dr. S.B. Maurya, learned AGA-I for the State.

2. The instant bail application has been filed seeking release of the applicants on bail in Case Crime No. 562 of 2023, under Sections 302, 323, 504, 506, 34 IPC, Police Station Kotwali Hata, District Kushinagar during pendency of the trial.

3. FIR of the present case was lodged against applicants and their brother Diwakar Mishra and according to the FIR on 27.08.2023 when father of the informant was going to the market then on the way applicants along with their brother Diwakar Mishra intercepted him and assaulted him through lathi, danda, kick and fist and thereafter they taken him to their home and after receiving information the brother-in-law of the informant arrived at the house of the applicants and has taken his father. It is further mentioned in the FIR on 29.08.2023 during treatment his father expired.

4. Learned counsel for the applicants submitted that entire allegation made against the applicants is totally false and although incident is said to have taken place on 27.08.2023 at about 2.00 PM but FIR of the present case was lodged on 29.08.2023 at 20.40 hours after the death of the injured and this fact clearly suggests that FIR of the present case is based on false and frivolous facts.

5. He further submits that informant of the case is not an eye witness and when during investigation statement of the eye witnesses were recorded by the Investigating Officer then all the three eye witnesses stated that co-accused Diwakar Mishra was making assault upon the deceased and applicants subsequently arrived at the spot and scolded both of them i.e. deceased and co-accused Diwakar Mishra, therefore, from the statement of the eye witnesses, it appears that applicants did not cause any injury to the

deceased.

6. He further submits that applicants are not having any criminal history and in the present matter they are in jail since September, 2023.

7. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicants.

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

9. Considering the statement of alleged eye witnesses and the argument advanced by learned counsel for the applicants, in my view, applicants, who did not cause any injury to the deceased, are 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 applicants - **Sonu Mishra** and **Amarjeet Mishra** 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 applicants shall appear before the trial court on the dates fixed, unless their personal presence is exempted.

(ii) The applicants 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 applicants 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 applicants.

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 :- 2.11.2023/AK Pandey