

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46935 of 2023

Applicant :- Puspendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinay Kumar Srivastava

Counsel for Opposite Party :- G.A., Ravindra Kumar

Hon'ble Sameer Jain, J.

1. Heard Shri Vinay Kumar Srivastava, learned counsel for the applicant, Shri Rajeev Dhar Dwivedi, learned A.G.A. for the State-respondent and Shri Ravindra Kumar, learned counsel for the informant.

2. The instant application has been filed seeking release of the applicants on bail in Case Crime No.57 of 2023, under Section 323, 452, 504, 504, 304 I.P.C., Police Station Malawan, District Etah, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 11.04.2023, under Section 147, 452, 323, 504, 308 I.P.C. against applicant and five others and according to the FIR, applicant and other accused persons made assault upon brother and father of the informant through iron pipe and due to the assault made by them, both sustained injuries.

4. Learned counsel for the applicant submits that initially F.I.R. of the present case was lodged, under Section 147, 452, 323, 504, 308 I.P.C. but after the death of the brother of the informant, case was converted under Section 304 I.P.C.

5. He further submits that on the basis of false allegation applicant has been made accused in the present matter alongwith five others.

6. He next submits that there is no specific allegation has been

made against the applicant and only on the basis of general and omnibus allegation, applicant has been made accused in the present matter alongwith five others.

7. He next submits that from perusal of the post-mortem report of the deceased, it appears that he died due to single head injury and there is no evidence on record, which can show that applicant is the author of this injury.

8. He next submits that co-accused Nem Singh and Radheshyam have already been released on bail by Co-ordinate Benches of this Court vide orders dated 19.07.2023 and 26.09.2023 passed in Criminal Misc. Bail Application Nos.28256 of 2023 and 41794 of 2023, respectively. The bail orders of the co-accused Nem Singh and Radheshyam are on record as Annexure No.6 to the affidavit filed in support of the instant bail application and the case of the applicant is at par with them.

9. He next submits that applicant is not having any criminal history and he is in jail in the present matter since 17.09.2023, therefore, they may be released on bail.

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

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

12. Considering the fact that on basis of general and omnibus allegation, applicant has been made accused in the present matter and post-mortem report of the deceased suggests that he died due to single head injury and there is nothing on record, which can show that applicant is the author of this injury and two co-accused persons namely; Nem Singh and Radheshyam have already been released on bail, in my view, applicant is entitled to be enlarged on

bail.

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

14. Let the applicant-**Puspendra**, 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.

15. 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.

16. 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 :- 23.11.2023

Zafar