

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46551 of 2023

Applicant :- Pappu @ Mahboob

Opposite Party :- State of U.P.

Counsel for Applicant :- Sushil Kumar Pandey

Counsel for Opposite Party :- G.A.,Laxmi Kant Bhatt

Hon'ble Sameer Jain,J.

1.Supplementary affidavit filed today on behalf of the applicant, is taken on record.

2. Heard Sri Sushil Kumar Pandey, learned counsel for the applicant; Sri Chandra Nath Bhatt, Advocate holding brief of Sri Laxmi Kant Bhatt, learned counsel for the informant and Sri Ajeet Kumar Madhesiya, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 122 of 2023, under Sections 302, 504 IPC, Police Station Meerapur, District Muzaffar Nagar, 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 due to enmity, applicant and other accused persons made assault upon the wife of the informant through spade and due to the assault made by them, she sustained injuries and during treatment, she died.

5. Learned counsel for the applicant submitted that due to enmity, applicant has been made accused in the present matter.

6. He further submitted that although in the FIR only general role has been assigned to all the accused persons but when the statement of the informant and other witnesses were recorded during investigation then they stated that although all the accused person made assault upon the deceased but they specifically stated that the assault made by co-accused Tayyab hit the deceased on her head.

7. He further submitted that therefore, role of causing injury to the deceased has been assigned to co-accused Tayyab.

8. He further submitted that post mortem of the deceased also suggests that deceased died due to head injury.

9. He further submitted that co-accused Mannu and Sartaj have already been released on bail by the co-ordinate Benches of this Court and case of applicant is at par with them.

10. He further submitted that although applicant is having criminal history of seven cases but out of seven cases, five cases were of Excise Act and entire criminal history of the applicant has been explained in the supplementary affidavit.

11. He further submitted that applicant is in jail in the present matter since 29.6.2023.

12. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail but could not dispute the arguments on facts advanced by learned counsel for the applicant.

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

14. However, it appears that apart from the present case, applicant is having criminal history of seven cases but from the perusal of the criminal history which has been explained in the supplementary affidavit, it appears that out of seven cases, five cases were of Excise Act and out of remaining two cases, one case was lodged by the informant side of the present case.

15. Further, however in the FIR, it is alleged that applicant and three others made assault through spade on the head of the deceased but during investigation when the statement of the witnesses were recorded then they stated that the assault made by co-accused Tayyab hit the deceased on her head and therefore, it appears that role of causing head injury to the deceased has been attributed to co-accused Tayyab.

16. Further, post mortem report also suggests that deceased sustained single head injury and she died due to head injury.

17. Further bail application of co-accused Mannu and Sartaj have already been allowed by the co-ordinate benches of this Court and case of applicant is at par with them and applicant is in jail in the present matter since June, 2023.

18. Therefore, considering the facts and circumstances of the case,

discussed above, in my view, applicant is entitled to be released on bail.

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

20. Let the applicant-**Pappu @ Mahboob**, 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.

21. 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.

22. 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 :- 8.11.2023

Ankita