

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46822 of 2023

Applicant :- Manveer

Opposite Party :- State of U.P.

Counsel for Applicant :- Upendra Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Upendra Upadhyay, learned counsel for the applicant and Sri Kunwar Tejendra Bahadur, learned AGA, for the State.

2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.492 of 2023, under Sections 323, 304 and 504 IPC, Police Station Hasanpur, District Amroha during pendency of the trial.

3. FIR of the present case was lodged on 19.8.2023 at about 12.41 PM against the applicant under Sections 323,504 and 308 IPC and according to the FIR, on 18.8.2023 the husband of the informant had gone to the shop of Madan Pal at about 10.00 PM in the night and at the shop some dispute arose between him and applicant and applicant assaulted him through wooden stick on his head and due to assault made by applicant the husband of the informant lost his conscious. It is further mentioned in the FIR that after hearing about the incident informant also arrived at spot and has taken her husband to the Hospital.

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

5. He further submits that from the perusal of the FIR it appears

that informant arrived at spot after the incident and only eye witness of the incident is one Atar Singh and from his statement recorded under Section 161 Cr.P.C. it reflects that he was a chance witness.

6. He further submits that even according to the statement of eye witness Atar Singh suddenly during fight applicant gave danda blow on the head of the deceased and, therefore, it appears that applicant was not having any intention to cause the death of the deceased.

7. He further submits that as per post mortem report deceased sustained as many as 10 injuries and this fact completely belies the statement of the alleged eye witness Atar Singh and it reflects that actually he did not witness the incident.

8. He further submits that surprisingly the statement of shop keeper Madan Pal has not been recorded by Investigating Officer during investigation.

9. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 20.8.2023.

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

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

12. However, as per allegation applicant gave danda blow on the head of the deceased but it appears that only witness of the alleged

incident is one Atar Singh and he appears to be chance witness.

13. Further, post mortem report of the deceased suggests that deceased sustained as many as 10 injuries but on the other hand eye witness Atar Singh stated that applicant gave danda blow on the head of the deceased suddenly, therefore, his statement does not find support from the post mortem report.

14. Further, even from the statement of the eye witness Atar Singh the incident appears to be occurred suddenly.

15. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 20.8.2023.

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

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

18. Let the applicant-**Manveer** 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.

19. 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.

20. 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 :- 3.11.2023
SKM