

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47737 of 2023

Applicant :- Shivam @ Shubham And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Sachin Malik

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Onkar Singh, Advocate holding brief of Sri Sachin Malik, learned counsel for the applicants and Sri Jhamman Ram, 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. 210 of 2023, under Sections 147, 304 IPC, Police Station Mawana, District Meerut during pendency of the trial.

3. FIR of the present case was lodged on 17.05.2023 under Sections 147, 304 IPC against applicants and three others and according to the FIR on 11.05.2023 son of the informant had gone in the house of co-accused Sagar and he did not return and informant was under impression that he had gone along with co-accused Sagar to attend the marriage of co-accused Sagar but on 12.05.2023 at about 3.00 PM one Mukesh W/o Shekhar informed the informant that his son is lying on the roof of co-accused Sagar and thereafter when informant arrived at spot then found, the dead body of his son was lying on the roof of house of co-accused Sagar and his dead body was badly burnt.

4. It is further mentioned in the FIR that one Vikas also informed the informant that on 11.05.2023 in the night when he was going to call the deceased in the house of co-accused Sagar then he witnessed that applicants and other co-accused persons were present there. It is further mentioned in the FIR that informant was having doubt that applicant and other persons committed the murder of his son.

5. Learned counsel for the applicants submitted that entire story narrated by the informant in the FIR is totally false and FIR of the present case was lodged after about five days and this inordinate

delay also strengthen the defence version that on the basis of false allegation, applicants have been made accused in the present matter.

6. He further submits that inquest report of the deceased completely belies the prosecution case, which shows that inquest was conducted on 12.05.2023 on the information of one Golu and on his information police arrived at spot and found that dead body of the deceased was lying in the house of the informant.

7. He further submits that although during investigation some eye witnesses also came forward but from their statements it appears that there was no intention to cause the death of the deceased and during scuffle between applicants and deceased and other accused, deceased sustained injuries by falling on the furnace. He further submits that applicants are not having any criminal history and in the present matter they are in jail since July, 2023.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that inquest report of the deceased totally belies the version of the FIR and even from perusal of the statements of the alleged eye witnesses, it appears to be a case of accidental sustaining burn injuries by falling on the furnace.

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

10. However, as per FIR on the information when informant arrived at the house of co-accused Sagar then according to him he found the dead body of his son on the roof of the house of co-accused Sagar but FIR of the present case was lodged on 17.05.2023 and it appears that deceased died well before on 12.05.2023. Further, inquest was conducted on 12.05.2023 on the information furnished by one Golu and according to him the dead body of the deceased was lying in the house of the informant and as per inquest report inquest was conducted on 12.05.2023, therefore, I find force in the argument advanced by learned counsel for the applicant that inquest report falsifies the fact mentioned in the FIR.

11. Further, however, during investigation Investigating Officer recorded the statements of some eye witnesses but they stated that at the time of incident some dispute arose between both sides and thereafter accused persons pushed the deceased and deceased fell down on the furnace and sustained burn injuries, therefore, it appears that neither applicants nor any other accused was having intention to cause the death of the deceased.

12. Further, admittedly FIR of the present case was lodged after five days. Further, applicants is not having any criminal history and in the present matter they are in jail since July, 2023.

13. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicants are entitled to be released on bail.

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

15. Let the applicants - **Shivam @ Shubham** and **Monu** 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.

16. 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.

17. 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

AK Pandey