

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47306 of 2023

Applicant :- Ram Kishor

Opposite Party :- State of U.P.

Counsel for Applicant :- Shriyansh Singh, Kavita Aman

Counsel for Opposite Party :- G.A., Shiv Singh

Hon'ble Sameer Jain, J.

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

2. Heard Sri Shriyansh Singh, learned counsel for the applicant, Sri Shiv Singh, learned counsel for the informant and Sri Shatruhan Yadav, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 134 of 2023, under Sections 302/34, 323, 504, 506 IPC, Police Station Girwan, District Banda during pendency of the trial.

4. FIR of the present case was lodged against applicant and three others under Sections 307, 323, 504, 506 IPC and according to the FIR on 18.06.2023 at about 10.30 AM in the morning some dispute arose between informant side and applicant side with regard to boundary of the field and applicant and other accused persons made assault upon the head of the husband of the informant through Banka and due to the assault made by them he sustained serious injuries on his head. It is further mentioned in the FIR that the brothers-in-law (Devar) Raj Kishor and Raja Bhaiya of the informant arrived at spot and accused persons also assaulted them.

5. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Sections 307, 323, 504, 506 IPC but after a week when injured died then case was converted under Section 302 IPC. He further submits that in the FIR only general allegations have been leveled and it appears that informant was not an eye witness but during investigation when her statement was recorded under Section 161 Cr.P.C. then she claimed herself to be an eye witness along with other witnesses including her Devars Raj Kishor and Raja Bhaiya and stated that applicant and others

made assault through Lathi and Danda upon the deceased and applicant and other accused persons caught hold the deceased and thereafter co-accused Kunji Lal made assault upon the head of the deceased through Banka.

6. He further submits that even in the statements of the alleged eye witnesses the fatal injury of Banka has been attributed to co-accused Kunji Lal. He further submits that actually deceased side was the real aggressor and they made assault due to the dispute of boundary of the field upon the applicant and others and due to the assault made by them four persons from the side of applicant also sustained injuries and their injury reports have been annexed as Annexure-8 to the affidavit filed in support of present application. He further submits, in spite of their best efforts neither earlier they could be medically examined nor FIR of the applicant side could be lodged and injured of the applicant side could only be examined on 22.06.2023 i.e. after four days but injury reports suggests that they sustained injury about 4-5 days before.

7. He further submits that when FIR of the applicant side was not lodged then an application was moved under Section 156(3) Cr.P.C., which is still pending and it is a case of cross version and applicant is not having any criminal history and in the present matter he is in jail since 22.06.2023.

8. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submits that due to the dispute of boundary of field applicant and other accused persons made assault upon the deceased and there is specific allegation against the applicant that he and other accused persons caught hold the deceased and thereafter co-accused Kunji Lal made assault upon the deceased on his head through Banka.

9. Learned counsel for the informant further argued that only to show his innocence anyhow applicant side has procured the injury reports of four persons and no reliance can be placed on such medical reports and admittedly the injured from side of the applicant were medically examined after four days. He further submits that considering the role of the applicant in the crime, he should not be released on bail.

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

11. From the perusal of the statement of the eye witnesses, it appears that role of catching hold has been assigned to the

applicant and other accused persons and role of causing head injury through Banka has been attributed to co-accused Kunji Lal and post mortem report suggests that due to head injury deceased died.

12. Further, in the incident, it appears that from the side of applicant four persons also sustained injuries and although all the four persons were medically examined after four days but their injury report suggests that they sustained injuries about 4-5 days before, therefore, it appears there is cross version and who was the real aggressor can only be decided by the trial court during trial.

13. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is 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 applicant - **Ram Kishor** 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.

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 applicant.

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 :- 17.11.2023
AK Pandey