

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48260 of 2023

Applicant :- Syed Zubair Ali

Opposite Party :- State of U.P.

Counsel for Applicant :- Saleem Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Manoj Kumar, Advocate holding brief of Sri Saleem Ahmad, learned counsel for the applicant and Sri Amar Nath Vishwakarma, learned Brief Holder for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 198 of 2023, under Sections 304, 308 IPC, Police Station Chirgaon, District Jhansi during pendency of the trial.

3. FIR of the present case was lodged against unknown driver on 28.07.2023 under Sections 279, 338, 304-A IPC and according to the FIR on 27.07.2023 the driver of the vehicle negligently and rashly was driving the Swift Dezire Car and due to his rash driving, six persons sustained injuries including a girl aged about eight years and due to the accident caused by the driver of the vehicle, three injured died and treatment of eight years old girl is being conducting in the hospital.

4. Learned counsel for the applicant submitted that however applicant was not named in the FIR but during investigation it was revealed that applicant is the owner and driver of the vehicle, who caused the accident. He further submits that applicant did not intentionally caused the accident and at the time of driving the vehicle when suddenly eight years girl came in front of his car then to save her life he caused the accident.

5. He further submits that however in the FIR it is mentioned that three persons died in the accident but subsequently during treatment one more person died, therefore, it is a case, in which, four persons lost their lives. He further submits that applicant was not having any intention to cause the death of these persons. He further submits that applicant is not having any criminal history

and in the present matter he is in jail since 29.07.2023.

6. Per contra, learned Brief Holder for the State opposed the prayer for bail and submitted that applicant is the owner and driver of the vehicle and at the time of accident he was driving the car and due to his rash driving, accident occurred, therefore, in view of the provision of Section 304 IPC, it cannot be said that he was not responsible for the death of four persons.

7. He further submits that from the statement of the injured of the case, it appears that due to rash and negligent driving of the applicant, accident occurred and from the record it could not be reflected that with intention to save the life of eight years old girl, the accident occurred, therefore, considering the fact that due to rash driving of the applicant, four persons lost their lives, applicant should not be released on bail.

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

9. From the perusal of record, it reflects that due to rash and negligent driving of the applicant, six persons sustained injuries and out of them, four persons died and all the four persons were ladies and from the perusal of the statements of remaining two injured, which have been annexed along with instant bail application, it appears that due to rash and negligent driving of the vehicle, the accident occurred and applicant is the owner and driver of the vehicle and from the statements of both the injured, the defence taken by the applicant prima facie appears to be incorrect and false.

10. As per provision of Section 299 IPC whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable Homicide.

11. In case at hand, the applicant caused the death of four persons and applicant was well aware with the fact that due to his rash and negligent driving persons could lost their lives. Further, applicant is in jail since 29.07.2023 i.e. hardly since three and half months.

12. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail at this stage.

13. Accordingly, the instant bail application is rejected at this stage.

14. 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 :- 21.11.2023

AK Pandey