

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47667 of 2023

Applicant :- Mohammad Ebadur Rahman

Opposite Party :- State of U.P.

Counsel for Applicant :- Vijay Kumar Tiwari, Jitendra Singh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Vijay Kumar Tiwari, learned counsel for the applicant and Sri R.N.Srivastava, 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.106 of 2021, under Section 304 IPC and Section 15(3) Indian Medical Council Act, Police Station Seorahi, District Kushinagar during pendency of the trial.
3. FIR of the present case was lodged on 11.5.2021 against the applicant and three others and one unknown person and according to the FIR, when informant admitted his daughter in Metro Hospital then without any proper treatment, the treatment was provided to her by a quack and due to that his daughter died. It is further mentioned in the FIR that applicant and other nominated accused persons are responsible for the death of the daughter of the informant.
4. Learned counsel for the applicant submits that FIR of the present case is based on vague facts and it is nowhere mentioned in the FIR that what was the capacity of the applicant in the Hospital.
5. He further submits that applicant is neither the proprietor of the alleged Hospital nor he was the Doctor. He further submits,

applicant is the resident of the same locality, therefore, at the time when treatment was being given to the daughter of the informant he was just present in the Hospital and only due to his presence he has been made accused in the present matter.

6. He further submits that from the record it could not be reflected that due to negligence of the applicant deceased died.

7. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 27.8.2023.

8. Per contra, learned AGA opposed the prayer for bail and submits that from the statement of the informant recorded under Section 161 Cr.P.C. it is quite apparent that applicant along with other co-accused persons was running the hospital and he along with other co-accused persons started to treat the daughter of the informant in the absence of the Doctor and due to wrong treatment his daughter died.

9. Learned AGA further submits that FIR of the present case was lodged on 11.5.2021 but applicant is in jail since 27.8.2023 and therefore, it appears that applicant was absconded for more than two years and, therefore, considering the facts and circumstances of the case, applicant is not entitled to be released on bail.

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

11. From the statement of informant recorded under Section 161 Cr.P.C. it reflects that the alleged Metro Hospital was being run by the applicant and in the absence of the Doctor, applicant and other co-accused persons provided treatment to the daughter of the informant and due to their wrong treatment she died. Further, no

reason for his false implication could be brought on record by the applicant.

12. Further, FIR of the present case was lodged on 11.5.2021 but from the record it reflects that applicant is in jail since 27.8.2023 and, therefore, it appears that applicant either appeared before the court concerned or brought before the court concerned after more than two years and no explanation in this regard has been given by the applicant in the entire bail application. Therefore, it appears that applicant absconded for more than two years.

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

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

15. 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 :- 24.11.2023

SKM