

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48262 of 2023

Applicant :- Anita Giri

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Yadav, Prem Shankar

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Prem Shankar, learned counsel for the applicant, Sri Sai Girdhar, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Anita Giri, seeking enlargement on bail during trial in connection with Case Crime No. 579 of 2023, under Sections 302, 419, 420, 120-B IPC, registered at P.S. Campierganj, District Gorakhpur.

4. As per certified copy of the FIR issued on 13.10.2023 from the Court of the District and Sessions Judge, Gorakhpur, the present FIR was lodged on 23.08.2023 under Section 304 IPC by Sialesh Chaurasia against the applicant and four other persons alleging therein that his wife Sarita Chaurasia was a pregnant lady who was taken to Maa Durga Hospital on 22.08.2023 at 05:00 am where the accused persons met and assured him to conduct the safe delivery and took Rs. 10,000/- from him. Then at about 08:00 am they told him that an operation has to be done for delivery for which Rs. 20,000/- more has to be given for which he became ready. During operation he was sent out from the operation theater and untrained persons conducted the operation in a negligent manner after which the child died and his wife became seriously ill. Dr. Aslam and Dr. Shailendra Nath Solanki were persons who conducted the procedure. They kept him in dark by stating that his wife is regaining her health but her condition deteriorated after which they told him to take her to another hospital where she would improve. He wanted to take her medical college but they forced him and his wife was taken to another hospital where she died. He states that untrained Dr. Aslam and Dr. Shailendra Nath Solanki and the entire staff of the hospital acted in a negligent manner due to which his wife died. The certified copy of the said FIR is from

page 18 to 24 of the paper book.

5. Learned counsel for the applicant argued that although the certified copy of the FIR shows it to be lodged under Section 304 IPC but the computer copy of the same shows that the FIR was lodged under Section 304-A IPC, the computerized copy obtained from the relevant website which is from page 12 to 17 of the paper book. It is argued while placing para 14 of the affidavit that the applicant is a Safai Karmchari in Maa Durga Hospital, Gorakhpur. It is argued while placing para 15 of the affidavit that the applicant is neither a nurse nor has been appointed as nurse in the said hospital. It is further argued that even general and omnibus allegations have been levelled against the applicant and other accused persons. It is argued that the police during investigation converted the case into one under Section 302 IPC. It is argued that the applicant has no motive to commit the aforesaid offence. The first informant brought his wife to the hospital for her delivery voluntarily. It is argued that the applicant has neither been owner nor in any manner incharge and responsible of the said hospital. The applicant is a lady and she is entitled to the benefit of Section 437 Cr.P.C. It is argued that the applicant has no criminal history as stated in para 17 of the affidavit and is in jail since 26.08.2023.

6. Per contra, learned counsel for the State opposed the prayer for bail.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the applicant is a lady. Common and general role has been assigned to the applicant in the FIR. The case is of a medical negligence. The procedure is alleged to have been performed on the wife of the informant by Dr. Aslam and Shailendra. General and omnibus allegations have been levelled against other accused persons including the applicant. There is no report of any expert regarding the allegation of medical negligence.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant **Anita Giri**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that she shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure her presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against her, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against her in accordance with law and the trial court may proceed against her under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is ***allowed***.

Order Date :- 21.11.2023

M. ARIF

(Samit Gopal, J.)