

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48740 of 2023

Applicant :- Pappu

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajai Kumar, Vivek Singh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Ajai Kumar, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 432 of 2021, under Sections 323, 504, 304 IPC, Police Station- Bilsa, District- Budaun, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 21.11.2021 against the applicant and five others and according to the FIR, on 04.11.2021, applicant and other accused persons after entering in the house of the informant made assault through *iron rod* and *wooden sticks* and due to assault made by them, one Bantu sustained serious injuries. It is further mentioned in the FIR that one Urmila also sustained injuries in the incident. It is further mentioned in the FIR that subsequently due to injuries, Bantu died on 17.11.2021.

4. Learned counsel for the applicant submitted that on the basis of general allegation, FIR of the present case was lodged and applicant was made accused alongwith five others. He further submitted that as per the allegation, incident occurred on 04.11.2021 but in spite of that FIR was lodged on 21.11.2021 i.e. after 17 days.

5. He further submitted that although, one injured namely Urmila in her statement recorded under Section 161 Cr.P.C. stated that due to lathi assault made by the applicant, deceased sustained injuries but her statement was recorded after one month. He further submitted that applicant is facing trial under Section 304 IPC and he is in jail since 04.12.2021 i.e. for last almost two years. He further submitted that he is not having any criminal history.

6. Per contra, learned AGA opposed the prayer for bail and submitted that in the statement of the injured, specific allegation of causing head injury to the deceased has been attributed to the applicant but could not dispute the fact that statement of the injured was recorded after one month and applicant is facing trial under Section 304 IPC and he is in jail since December, 2021 i.e. almost last two years.

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

8. From the perusal of the record, it reflects that FIR of the present case was lodged after 17 days and only general allegation has been leveled against all the accused persons including applicant but it appears that during investigation when the statement of the injured Urmila was recorded under Section 161 Cr.P.C. then she stated that due to lathi assault made by the applicant, deceased sustained injuries on his head but her statement was recorded after one month.

9. Further, applicant is facing trial under Section 304 IPC and he is in jail since December, 2021 i.e. for last almost two years. Further, applicant is not having any criminal history to his credit.

10. Therefore, considering the facts and circumstances of the case discussed above, particularly the fact that applicant is in jail in the present matter for last almost two years, in my view applicant is entitled to be released on bail.

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

12. Let the applicant- **Pappu** 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.

13. 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.

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 :- 23.11.2023

KK Patel