

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48872 of 2023

Applicant :- Mahboob

Opposite Party :- State of U.P.

Counsel for Applicant :- Sandeep Kumar Shrivastava, Hemlata Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Sandeep Kumar Srivastava, learned counsel for the applicant, Sri Ajay Singh, learned A.G.A-I 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-Mahboob, seeking enlargement on bail during trial in connection with Case Crime No. 637 of 2023 in Case No.8022 of 2023, under Sections 302, 342, 34, 504 IPC, registered at Police Station Khurja Nagar, District Bulandshahr.
4. The FIR of the matter was lodged on 6.8.2023 by Akshay against the applicant, Aamir and Nazar alleging therein that he and his brother Amit had gone yesterday on 5.8.2023 at about 7.45 p.m. to the Saloon of Mahboob for cutting. There was light in the shop. Mahboob, Amir and Nazar, the accused persons were sitting there. Amit had loaned Rs.5,000/- to Mahboob and asked him about it repeated times on which Nazar, Mahboob and Aamir became annoyed and started abusing and assaulting him. Mahboob caught-hold the neck of his brother, Nazar caught-hold hands of his brother whereas Aamir assaulted in the abdomen and body of his brother Amit with scissor repeated times. He tried to save his brother on which Mahboob and Nazar took him to nearby house and locked him there. His brother got himself freed and ran away. The incident was seen by people of the place. On 6.8.2023 at about 8 a.m. he somehow managed to get the door of the house opened and rushed towards his house and came to know that his brother Amit ran towards station where he fell down and died.
5. Learned counsel for the applicant argued that the applicant has

been falsely implicated in the present case. It is argued that the role of assault has been assigned to co-accused Aamir by scissor upon the deceased. The role assigned to the applicant is of catching hold only. It is argued that scissor has been recovered on the pointing out of co-accused Aamir. It is argued that as per the FIR, the incident was witnessed by many persons but the FIR has been lodged on the next day at 1.36 p.m. which is after the delay which is unexplained. It is argued that co-accused Nazar @ Nazar Khan has been granted bail by coordinate Bench of this Court vide order dated 3.11.2023 passed in Criminal Misc. Bail Application No.47003 of 2023, copy of the said order has been produced by learned counsel for the applicant, the same is taken on record. It is argued that the case of the applicant is distinguishable with the case of co-accused Aamir. It has also been pointed out that the applicant is not having any criminal history as stated in para 15 of the affidavit. The applicant is in jail since 7.8.2023.

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

7. After hearing the counsel for the parties and perusing the records, it is evident that the role assigned to the applicant is of catching hold to the deceased along with co-accused Nazar @ Nazar Khan. The role of assault by scissor on the deceased has been assigned to co-accused Aamir. There is recovery of scissor on the pointing out of co-accused Aamir. Co-accused Nazar has been granted bail. The case of the applicant is distinguishable with that of co-accused Aamir. The applicant has no criminal history.

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-**Mahboob**, 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 he 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 his 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 him, 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 him in accordance with law and the trial court may proceed against him 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**.

(Samit Gopal, J.)

Order Date :- 17.11.2023

Gaurav Kuls