

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49117 of 2023

Applicant :- Ram Iqbal Yadav Alias Akbar Yadav And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajendra Kumar, Ram Yash Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Shri Ram Yash Pandey, learned counsel for the applicants, Shri Amar Nath Verma, learned Brief Holder for the State-respondent.
2. The instant application has been filed seeking release of the applicants on bail in Case Crime No.151 of 2023, under Section 147, 323, 504, 506, 308, 304 I.P.C., Police Station Dildarnagar, District Ghazipur, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 14.09.2023, under Section 147, 323, 504, 506, 308 I.P.C. against applicants and four others and according to the FIR, on 13.09.2023 at about 7:30 p.m. in the evening applicants and other accused persons made assault upon informant and others through wooden sticks and due to the assault made by them, father, brother and bhabhi of the informant sustained injuries.
4. Learned counsel for the applicants submits that initially F.I.R. of the present case was lodged, under Sections 147, 323, 504, 506, 308 I.P.C. but after the death of the father of the informant, case was converted under Section 304 I.P.C. He further submits that in the incident, it is alleged that one person died and three persons sustained injuries but on the basis of general and omnibus allegation, applicants have been made accused alongwith four

others. He further submits that from the post-mortem report of the deceased, it appears that he died due to head injury and there is no evidence on record, which can show that applicants are the author of this injury.

5. Learned counsel for the applicants next submits that co-accused Hridya Narayan Yadav has already been released on bail by a Co-ordinate Bench of this Court vide order dated 26.10.2023 passed in Criminal Misc. Bail Application No.44963 of 2023. The bail order of the co-accused Hridya Narayan Yadav is on record at Annexure No.6 to the affidavit filed in support of the instant bail application and as per the F.I.R., the case of the applicants are at par with him.

6. He next submits that applicants are not having any criminal history and they are in jail in the present matter since 16.09.2023, therefore, they may be released on bail.

7. Per contra, learned AGA opposed the prayer for bail and submits that statements of the injured persons have not been annexed alongwith the instant bail application and from their statements, it appears that the case of the applicants is distinguishable from the case of co-accused Hridya Narayan Yadav. He further submits that as per the statements of the injured witnesses, co-accused Hridya Narayan Yadav and two others made assault through kicks and fists while applicants and one another made assault through wooden sticks and therefore, on the ground of parity of the bail order of the co-accused Hridya Narayan Yadav, applicants should not be released on bail. However, he could not dispute the facts that no specific allegation has been levelled against the applicants and as per the allegation made by injured witnesses, applicants and one another made assault through wooden sticks and post-mortem report of the deceased suggests that deceased died due to head injury. He further could not dispute the fact that there is no

allegation against the applicants that they caused head injury to the deceased.

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

9. However, from the record, it reflects that in the alleged incident one person died and three persons sustained injuries and from the statements of the three injured persons, which were produced by the learned A.G.A. during the course of the argument, it appears that applicants and one another made assault through wooden sticks but as per the post-mortem report of the deceased, he sustained one lacerated wound on his head and two abrasions on left eye and right wrist joint and therefore, it appears that he died due to head injury and there is no evidence on record, which can show that applicants are the persons, who caused head injury to the deceased

10. Further, in the F.I.R. only general role has been assigned to all the accused persons including co-accused Hridya Narayan Yadav and co-accused Hridya Narayan Yadav has already been enlarged on bail by a Co-ordinate Bench of this Court vide order dated 26.10.2023 and his bail order has been appended alongwith instant bail application.

11. Further, applicants are not having any criminal history and they are in jail in the present matter since 16.09.2023.

12. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicants are entitled to be enlarged on bail.

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

14. Let the applicantss-**Ram Iqbal Yadav Alias Akbar Yadav** and **Sarvesh Yadav**, 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 applicants shall appear before the trial court on the dates fixed, unless their personal presence are exempted.
- (ii) The applicants 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 applicants shall not indulge in any criminal and anti-social activity.

15. 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 applicants.

16. 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 :- 20.11.2023

Zafar