

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49367 of 2023

Applicant :- Shivnarayan Kushwaha

Opposite Party :- State of U.P.

Counsel for Applicant :- Ruksana

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Mohd. Azmal Farooqui, learned Advocate, holding brief of Ms. Ruksana, learned counsel for the applicant and Sri Imran Khan, 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.15 of 2020, under Section 304 IPC, Police Station Majhgavan, District Hamirpur during pendency of the trial.

3. FIR of the present case was lodged on 11.2.2020 against the applicant under Section 304 IPC and according to the FIR, on 11.2.2020 at about 7.00 PM in the evening applicant, the younger brother of the informant, under intoxication demanded money from his father but when his father stated that he was not having any money then suddenly in sudden provocation he made several assaults upon his father through 'sabbal'. It is further mentioned in the FIR that due to assault made by applicant his father sustained injuries and died.

4. Learned counsel for the applicant submits that applicant is the son of the deceased and informant is his elder brother and on the basis of false allegation he has been made accused in the present matter.

5. He next submits that during trial when informant and mother of

the applicant appeared before the trial court as PW-1 and PW-2 then they did not support the prosecution case and they have been declared hostile.

6. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 13.2.2020, i.e., for almost four years.

7. Per contra, learned AGA opposed the prayer for bail and submits that deceased was the father of the applicant and he sustained as many as 13 injuries and, therefore, it cannot be said that in sudden provocation applicant in anger suddenly made assault.

8. Learned AGA, however, could not dispute the fact that applicant is not having any previous criminal history and during trial when informant and mother of applicant appeared before trial court then they did not support the prosecution case and have been declared hostile. He further could not dispute the fact that applicant is in jail since 13.2.2020, i.e., for almost four years.

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

10. However, applicant is the son of the deceased and FIR of the present case was lodged by his elder brother and his mother was also one of the witness but during trial when informant and his mother appeared before the trial court then they did not support the prosecution case and have been declared hostile.

11. However, post mortem report of the deceased suggests that deceased sustained as many as 13 injuries but according to the FIR under intoxication in sudden provocation applicant made assault.

12. Further, applicant is not having any previous criminal history and in the present matter he is in jail since February, 2020, i.e., for almost four years.

13. Therefore, considering the facts and circumstances of the case discussed above, particularly the long incarceration of applicant, in my view, applicant is entitled to be released on bail.

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

15. Let the applicant-**Shivnarayan Kushwaha** 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.

16. 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.

17. 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 :- 5.12.2023
SKM