

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52957 of 2023

Applicant :- Mohd. Asif And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Apul Misra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Apul Misra, learned counsel for the applicants and Sri Pankaj Kumar, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicants on bail in Case Crime No. 958 of 2023, under Sections 279, 338, 504, 34, 304 IPC, Police Station Kotwali City, District Bijnor during pendency of the trial.

3. FIR of the present case was lodged on 21.09.2023 under Sections 307, 504 IPC against applicants and co-accused Mohd. Ali and according to the FIR due to one month old enmity on 15.09.2023 when applicants were in four wheeler and applicant no.2 was driving the same, he hit the son of the informant and thereafter crushed him and both the applicants ran away from the spot after leaving the vehicle at spot.

4. Learned counsel for the applicants submitted that entire allegation made against the applicants are totally false and FIR of the present case was lodged after about a week. He further submits that FIR of the present case was lodged under Sections 307, 504 IPC but after the death of injured, the case was converted under Section 304 IPC.

5. He next submits that even from the record, it reflects that accidentally deceased sustained injuries and died but due to previous enmity applicants have been made accused in the present matter. He next submits that from the record, it could not be said that intentionally applicant caused crushed injury to the deceased through Car.

6. He further submits that even post mortem report suggests that deceased sustained single traumatic swelling on the head and died

due to Coma and therefore, it appears that deceased died due to accidental death.

7. He further submits that applicants are not having any criminal history and in the present matter they are in jail since 05.10.2023.

8. Per contra, learned AGA opposed the prayer for bail and submits that two eye witnesses categorically stated that applicant no.2 intentionally caused crushed injuries to the deceased and he was the person who was driving the Car and they also stated that applicant no.1 was sitting in the Car and prima facie it appears that intentionally applicants caused the death of the deceased.

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

10. However, from the statements of the alleged eye witnesses, who were two in numbers, it appears that they stated that intentionally applicant no.2, who was driving the car hit the motorcycle of the deceased and he sustained injuries but even these two eye witnesses did not state that after the incident applicants tried to crush the deceased and as per their statements they have ran away leaving the car at spot, therefore, at this stage the defence taken by the applicants cannot be completely ruled out specially considering the post mortem report of the deceased that he sustained single injury on the head and died due to coma as result of head injury.

11. Further, applicants are not having any criminal history and in the present matter they are in jail since 05.10.2023.

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

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

14. Let the applicants - **Mohd. Asif** and **Arif** 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 is 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 :- 11.12.2023

AK Pandey