

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50648 of 2023

Applicant :- Bablu

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Saurabh Kumar Chauvey, learned Advocate, holding brief of Sri Sunil Sharma, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I, 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.200 of 2023, under Sections 323, 504, 506 and 304 IPC, Police Station Rohaniya, District Varanasi during pendency of the trial.

3. FIR of the present case was lodged against the applicant, his brother and his 'bhabhi' under Sections 323,504 and 506 IPC and according to the FIR, due to dispute applicant and his two relatives made assault upon the elder brother of the informant through wooden sticks, kicks and fists and due to assault made by them he sustained injuries. It is further mentioned in the FIR that applicant is cousin brother of the informant.

4. Learned counsel for the applicant submits that initially FIR of the present case was lodged under Sections 323, 504 and 506 IPC but after the death of one of the injured case was converted under Section 304 IPC.

5. He further submits that in the FIR and in the first statement of the informant recorded during investigation only general allegation of assault has been made against the applicant and two others but

during investigation when Investigating Officer recorded his second statement then he specifically stated that his brother Rajendra Prajapati and his wife Savitri Devi (bhabhi) made assault upon the deceased and injured Golu and he did not assign any role of causing injury to the applicant.

6. He further submits that after the second statement of the informant when Investigating Officer recorded the statement of the injured and other eye witnesses then they also repeated the version of the informant stated by him in his second statement.

7. He further submits that however, in the FIR there is allegation that nephew of the informant Golu also sustained injury but from the statement of Golu it appears that he did not sustain any injury.

8. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 7.7.2023.

9. Per contra, learned AGA, however, opposed the prayer for bail but could not dispute the fact that from the statement of the injured witnesses and eye witnesses and second statement of the informant it reflects that applicant did not cause any injury to the injured.

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

11. However, in the FIR and the first statement of the informant there is allegation that applicant and he along with two other accused persons made assault through wooden sticks, kicks and fists upon the elder brother of the informant and his nephew and it also appears that subsequently elder brother of the informant died

but during investigation when second statement of the informant was recorded then he attributed the role of causing injury to co-accused Rajendra Prajapati and his wife and similar statement was given by other eye witnesses including the alleged injured and from these statements it appears that applicant did not cause any injury to the deceased.

12. Further, applicant is not having any previous criminal history and in the present matter he is in jail since July, 2023.

13. Therefore, considering the facts and circumstances of the case discussed above, 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-**Bablu** 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 :- 13.12.2023

SKM