

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52871 of 2023

Applicant :- Sheetla Prasad Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Virendra Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Virendra Kumar Yadav, learned counsel for the applicant and Sri R.N. Srivastava, 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.351 of 2023, under Sections 147,323,504,452 and 304 IPC, Police Station Cholapur, District Varanasi during pendency of the trial.

3. FIR of the present case was lodged on 15.8.2023 at 13.26 hours against the applicant and seven others under Sections 147,323,504 and 452 IPC and according to the FIR, on 14.8.2023 some dispute arose between one Brijesh Rajbhar with regard to plucking of guava and due to that dispute on 15.8.2023 at about 8.00 AM in the morning applicant and other co-accused persons after entering into the locality of informant made assault upon them. It is further mentioned in the FIR that applicant and other co-accused persons even entered in their houses and caused injuries to the laides of the houses and due to assault made by them several persons sustained injuries.

4. Learned counsel for the applicant submits that initially FIR of the present case was lodged under Sections 147,323,504 and 452 IPC but when one of the injured unfortunately died then the case was converted under Section 304 IPC.

5. He further submits that on the basis of false allegation applicant has been made accused in the present matter along with seven others.

6. He further submits that only general and omnibus allegations have been levelled against all the accused persons including the

applicant.

7. He further submits that actually informant side was the real aggressor and they made assault and due to the assault made by them even from the side of applicant three persons sustained injuries including the applicant himself.

8. He further submits that FIR was also lodged by applicant side against the informant side on the same day, i.e., 15.8.2023 at about 15.11 hours and FIR lodged by applicant side has been annexed as Annexure-8 to the affidavit filed in support of the instant bail application.

9. He further submits that there is cross version and at this stage it is not possible to ascertain who was the real aggressor. He further submits unfortunately from the side of informant one person died.

10. He further submits that even injuries sustained by injured of the present matter could not be categorized as dangerous to life and from the perusal of the post mortem report of the deceased it appears that he died due to coma as a result of head injury.

11. He further submits that bail application of co-accused Naresh Yadav has been allowed by this Court and case of applicant is at par with him and applicant is not having any previous criminal history and in the present matter he is in jail since 25.8.2023.

13. Per contra, learned AGA opposed the prayer for bail and submits that apart from the present case applicant is also having criminal history of one case but he fairly conceded the fact that it was a case of minor offence but he could not dispute the fact that case of applicant is at par with co-accused Naresh Yadav as far as merit of the case is concerned, who has been released on bail by this Court.

14. Learned AGA further could not dispute the fact that only general and omnibus allegation has been levelled against the applicant and deceased died due to coma as result of head injury.

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

16. However, in the present matter as many as eight persons sustained injuries and one person died but from the perusal of the injury report of the injured persons which were produced by learned AGA during the course of argument it appears that all the

injured persons sustained simple injuries and from the perusal of the post mortem report of the deceased it reflects that he died due to coma as a result of head injury.

17. Further, in the FIR as many as eight persons were made accused including the applicant and only general and omnibus allegation has been made against all of them.

18. Further, in the incident from the side of applicant also three persons sustained injuries and from the side of applicant also an FIR was lodged on the same day, i.e., 15.8.2023.

19. Further, however, as per learned AGA apart from the present case, applicant is having criminal history of one case but from the information furnished by learned AGA, it appears that it was a case of minor nature and in the present matter, applicant is in jail since August, 2023 and co-accused Naresh Yadav has been released on bail and on merit, case of applicant is at par with him.

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

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

22. Let the applicant- **Sheetla Prasad 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 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.

23. 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.

24. 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 :- 8.12.2023

KK Patel