

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51193 of 2023

Applicant :- Jitendra Chauhan

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Sanjay Kumar Mishra, learned counsel for the applicant and Sri R.N. Srivastava, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 549 of 2023, under Sections 302, 323, 504 IPC, Police Station- Kotwali Hata, District-Kushinagar, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 22.08.2023 against applicant and others and according to the FIR, on 22.08.2023 at about 10:30 hours when applicant and other accused persons were making assault upon the nephew of the informant then his mother intercepted him and thereafter applicant and other accused persons made assault upon his mother and due to assault made by them, she died.
4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and on the basis of general allegation, he has been made accused in the present matter and in fact he never participated in the incident.
5. He further submitted that from the perusal of the post-mortem report of the deceased, it appears that she sustained one injury on her temporal region and one injury near her eye brow, therefore, it appears that she died due to injury sustained on her temporal region and there is no evidence on record, which can show that applicant is the author of this injury. He further submits, co-accused Vishnu Chauhan and Vijay Chauhan have been released on bail by this Court vide order dated 28.11.2023 passed in Criminal Misc. Bail Application No. 50830 of 2023 and case of applicant is at par with them.
6. He further submitted that applicant is not having any criminal history and he is in jail since 24.08.2023.

7. Per contra, learned AGA however, opposed the prayer for bail but could not dispute the fact that on the basis of general allegation, applicant has been made accused in the present matter and bail application of co-accused Vishnu Chauhan and Vijay Chauhan have been allowed by this Court and case of applicant is at par with them.

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

9. Considering the fact that applicant has been made accused in the present matter alongwith three others on the basis of general and omnibus allegation and co-accused Vishnu Chauhan and Vijay Chauhan have already been released on bail by co-ordinate Bench of this Court and case of applicant is at par with them, in my view applicant is also entitled to be released on bail.

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

11. Let the applicant- **Jitendra Chauhan** 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.

12. 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.

13. 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 :- 30.11.2023 / KK Patel