

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52048 of 2023

Applicant :- Manoj Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Prakash Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed on behalf of the applicant in Court today is taken on record.
2. Heard Shri Chandra Prakash Pandey, learned counsel for the applicant and Shri Manoj Kumar Singh, learned Brief Holder for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.216 of 2023, under Sections 147, 148, 149, 323, 324, 307, 302 I.P.C., Police Station Talgram, District Kannauj, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 02.09.2023 against applicant and four others and according to the FIR when informant was at his home then he received information that applicant and other accused persons caused injuries upon Abodh and Pramod and they were lying in the drain.
5. Learned counsel for the applicant submits that informant of the case was not an eye-witness and initially F.I.R. of the present case was lodged, under Sections 147, 323 I.P.C. but after the death of the injured Pramod, case was converted under Section 302 I.P.C.
6. He further submits that in the incident, it is alleged that one

person sustained injury and one died and even before death the statement of Pramod (since deceased) was also recorded under Section 161 Cr.P.C. by the Investigating Officer and from the statement, which has been annexed alongwith the instant bail application, it reflects that he initially made allegation of exhortation against the applicant and thereafter stated that all the accused persons made assault upon him and Abodh.

7. He further submits that he could not get the statement of injured Abodh recorded by the Investigation Officer and during the course of argument, same may be produced by the learned A.G.A.

8. He further submits that from the post-mortem of the deceased, it appears that deceased sustained one stitched wound on his parietal region and four healed scars.

9. He further submits that there is no evidence that applicant is the author of the head injury.

10. He further submits that however another injured Abodh sustained as many as four injuries but his injuries does not appear to be dangerous to life.

11. He further submits that as per prosecution, deceased remained unconscious for almost two weeks and only for an hour, he gained conscious and in one hour, his statement under Section 161 Cr.P.C. was recorded and this fact actually suggests that Investigating Officer never recorded his statement and on his own, he mentioned the fact in the case diary that statement of the deceased was recorded before his death.

12. He further submits that no recovery was made from the possession of the applicant.

13. He next submits that however applicant is having criminal history of about ten cases but his criminal history has been explained in Para 26 of the affidavit filed in support of the instant bail application and the majority of cases were of Arms Act and other offences were of Gambling Act and Goonda Act, etc. and he is in jail in the present matter since 16.09.2023.

14. Per contra, learned Brief Holder opposed the prayer for bail and submits that in the incident two persons sustained injuries and subsequently one died and statement of both injured persons were recorded by the Investigating Officer and statement of one injured Pramod (since deceased) can be treated as his dying declaration and he in his statement under Section 161 Cr.P.C. categorically stated that applicant participated in the incident and after exhortation, all the accused persons made assault and therefore, it cannot be said that applicant did not participate in the incident and did not cause injury either to the injured or to the deceased.

15. He further submits that from perusal of the statement of the injured Abodh, which was recorded by the Investigation Officer during investigation, it reflects that he specifically stated that applicant was having motive to commit crime and he and his son were having sharp edged weapon in their hands and other accused persons were having wooden sticks and all accused persons made assault upon him and deceased Pramod. He further submits, injury report of Abodh shows that he sustained four injuries and out of four injuries, two were incised wounds and therefore, it cannot be said that applicant did not participate in the present crime.

16. He further submits that applicant is having criminal history of about ten cases and this shows he is criminal mindset therefore, he should not be released on bail.

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

18. Applicant is named in the FIR alongwith other accused persons and as per allegation in the incident, two persons sustained injury and subsequently one died but before the death of the injured Pramod (since deceased) Investigating Officer recorded his statement under Section 161 Cr.P.C., which has been annexed alongwith the instant bail application and from perusal of the same, it reflects that he stated that applicant and other accused persons made assault upon him and before assault applicant made exhortation.

19. Further, from perusal of the statement of the injured Abodh, which was produced by the learned A.G.A. during the course of argument, it appears that he has specifically stated that applicant was having motive to commit crime and he and his son were having sharp edged weapon in their hands and applicant, his son and other accused persons made assault upon him and the deceased and from the injury of the injured Abodh, it appears that he sustained four injuries and out of four injuries, two injuries were incised wounds.

20. Further, from post-mortem report of the deceased, it appears that he died due to the injury sustained by him at his parietal region and there is no evidence that applicant is the author of this injury but in the incident more than five persons including applicant participated and from the statement of the injured and even statement of the deceased recorded under Section 161 Cr.P.C., prima-facie it cannot be said at this stage that applicant was not sharing the common object either to cause death to the deceased or to cause injury to the injured.

21. Further, from the record, it also reflects that applicant is having criminal history of ten cases and number of cases were of Arms Act.

22. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is not entitled to be released on bail.

23. Accordingly, without expressing any opinion on the merits of the case, the instant bail application filed on behalf of the applicant - **Manoj Kumar** is **rejected**.

Order Date :- 5.12.2023
Zafar