

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52576 of 2023

Applicant :- Radheshyam @ Gore

Opposite Party :- State of U.P.

Counsel for Applicant :- Mahendra Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Mahendra Pratap Singh, learned counsel for the applicant and Sri Kunwar Tejendra Bahadur, learned AGA for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 206 of 2023, under Section 304 IPC, Police Station Shivrajpur, District Kanpur Dehat during pendency of the trial.
3. FIR of the present case was lodged on 30.06.2023 under Sections 308, 506 IPC against the applicant and according to the FIR due to dispute arose between applicant and brother of the informant with regard to purchasing of liquor applicant gave a blow on his head through wooden stick and due to the assault made by the applicant brother of the informant sustained injuries.
4. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Sections 308, 506 IPC but after the death of the injured i.e. brother of the informant case was converted under Section 304 IPC.
5. He further submits that admittedly informant was not an eye witness and sole eye witness in the present matter was one Dharendra Kumar and from the statement of Dhierendra Kumar, which has been annexed as Annexure-7 to the affidavit, it reflects that applicant was salesman at the liquor shop and deceased came at the shop to purchase the liquor and at that time he was under intoxication and he started fighting with the applicant and applicant tried to pacify the matter but deceased was continuously abusing him and in sudden provocation applicant gave a blow to the deceased through wooden stick.

6. He further submits that even from the statement of sole eye witness namely Dhirenda Kumar, it appears that in sudden provocation applicant gave Danda blow upon the deceased. He further submits, applicant was not having any intention to cause his death. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 02.07.2023.

7. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that as per the sole eye witness in sudden provocation applicant gave a single blow upon the deceased through wooden stick.

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

9. However, as per the sole eye witness applicant gave a blow on the head of the deceased through wooden stick but from his statement it further reflects that deceased was in deep intoxication and he was abusing the applicant, who was salesman at liquor shop and thereafter in sudden provocation applicant gave a blow upon the deceased through Danda, therefore, I find force in the argument advanced by learned counsel for the applicant that even from the record, it could not be reflected that applicant was having any intention to cause the death of the deceased.

10. Further, post mortem report of the deceased also suggests that deceased sustained single injury on his head and he died due to coma. Further, applicant is not having any criminal history and in the present matter he is in jail since 02.07.2023.

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

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

13. Let the applicant - **Radheshyam @ Gore** 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.

14. 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.

15. 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

AK Pandey