

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53930 of 2023

Applicant :- Ravi Bhushan Chauhan

Opposite Party :- State of U.P.

Counsel for Applicant :- Arvind Kumar,Ram Swaroop

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Arvind Kumar Srivastava, learned counsel for the applicant and Sri Ajeet Kumar Madhesiya, learned brief holder for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 816 of 2023, under Sections 147, 148, 149, 307, 323, 427, 435, 504, 506, 302 IPC, Police Station- Kotwali, District- Deoria, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 01.10.2023 at about 20:55 hours against applicant and seven others and according to the FIR, due to dispute with regard to land of orchard on 01.10.2023 at about 10:00 a.m. in the morning applicant and other accused persons made assault upon the informant and others through wooden sticks, rod and fire-arm.
4. It is further mentioned in the FIR that applicant alongwith co-accused Rajaram, Shashibhushan, Dhananjay, Ananad Mohan, Sacchidanand, Akhilesh and Sandeep made assault upon the informant and Maharana Pratap through wooden sticks and iron rods and due to assault made by them informant and Maharana Pratap sustained serious injuries and thereafter applicant alongwith other accused persons burnt the vehicles of the informant side, which were standing at spot.
5. Learned counsel for the applicant submitted that initially FIR

of the present case was lodged under Section 307 IPC and other Sections but after the death of the injured Maharana Pratap, case was converted under Section 302 IPC.

6. He further submitted that on the basis of false allegation, applicant has been made accused in the present matter alongwith other accused persons and actually informant side was the real aggressor and on 01.10.2023 at about 9:30 a.m. in the morning informant and others including deceased arrived at the house of the applicant and made assault and due to assault made by them, from the side of applicant four persons sustained injuries but unfortunately, subsequently one person has died and in this regard, a FIR was also lodged by the side of applicant on 01.10.2023 at about 19:51 hours i.e. even before lodgement of the FIR of the present case and this fact clearly suggests that actually informant side was the real aggressor. He further submitted that this fact is also evident from the spot inspection report of the instant case, which has been annexed alongwith the instant bail application.

7. He further submitted that it is a case in which both the sides sustained injuries and from both sides one person each died and enmity with regard to land of orchard is admitted between both the sides and, therefore, at this stage, it cannot be said that who was the aggressor. He further submits, even from the statements of the prosecution witnesses including statement of Pradeep, one of the injured, it reflects that it is a case of free fight.

8. He further submitted that against the informant side, applicant side filed a civil suit for permanent injunction and an interim injunction was granted in favour of applicant side, which has also been annexed alongwith the instant bail application, therefore, there was no occasion for the applicant side to made assault and this fact also shows that actually

informant side was the real aggressor.

9. He further submitted that applicant is not having any criminal history and he is in jail since 27.10.2023.

10. Per contra, learned brief holder opposed the prayer for bail and submitted that applicant was named in the FIR and specific allegation has been levelled against the applicant and others that they made assault upon the informant side through wooden sticks and iron rods and due to assault made by them, one person died and three persons sustained injuries but could not dispute the fact that from the side of applicant also three persons sustained injuries and one person died and from the side of applicant also a FIR was lodged even before the lodgement of the FIR of the present case.

11. He further could not dispute the fact that even prosecution witnesses admitted that from both the sides fighting took place and it appears to be a case of free fight.

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

13. However, from the FIR, it reflects that applicant alongwith seven others made assault upon the informant side and due to assault made by them, one person died and three persons sustained injuries but injury report of only one person is on record and even as per the statements of the prosecution witnesses, it is a case of free fight.

14. Further, from the record, it also reflects that from the side of applicant also one person died and three persons sustained injuries and even a FIR was lodged from the side of applicant even before the lodgement of the FIR of the present case.

15. As per the applicant, informant side was the real aggressor but according to the prosecution, applicant side was the real aggressor but as per the FIR lodged by the applicant side, the incident occurred at the house of the applicant side and this fact finds support even from the spot inspection of the present case, therefore, *prima facie* from the spot inspection, it appears that the incident occurred in front of the house of the applicant side and, therefore, possibility cannot be ruled out, at this stage, that informant side was the aggressor.

16. Further, enmity between both the sides are admitted with regard to land of an orchard and in this regard a civil suit for permanent injunction has been filed by the applicant side against the informant side, which is still pending but an interim injunction order has been passed in favour of the applicant side, therefore, I find force in the argument advanced by learned counsel for the applicant that as interim injunction order has been passed in favour of the applicant side, therefore, there was no occasion for them to made assault .

17. Further, applicant however, in the instant bail application specifically averred that he is not having any criminal history but during the course of argument, learned brief holder submitted that applicant is also having criminal history of one case but he fairly conceded that it is a case of Section 323 IPC.

18. Further, in the present matter, applicant is in jail since October, 2023 i.e. for last almost two months.

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

20. Accordingly, without expressing any opinion on the merits

of the case, the instant bail application is **allowed**.

21. Let the applicant- **Ravi Bhushan 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.

22. 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.

23. 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 :- 15.12.2023

KK Patel