

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 149 of 2023

Applicant :- Abdul Hakeem

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home

Counsel for Applicant :- Dinesh Kr. Chaudhary, Deepak Kumar Pandey, Paritosh Shukla, Piyush Kumar Singh, Ripu Daman Shahi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
2. This bail application has been moved on behalf of the applicant/Abdul Hakeem for grant of bail, in Case Crime No. 96 of 2022, under Sections 323, 504, 304 IPC Police Station Maharajgaj Tarai, District Balrampur, during pendency of trial.
3. Learned counsel for accused-applicant while pressing the bail application submits that it is a case of false implication. The FIR of this case has been lodged with a considerable delay of five days and as per rituals body of the deceased was buried and under the orders of the District Magistrate the same was dug out and inquest and post mortem was performed. It is also submitted that in the post mortem report of the deceased two injuries of the nature of lacerated wound and contusion have been found on skull and forehead of the deceased and cause of death could not be ascertained and VISCERA was preserved, report of which is still awaited.
4. It is vehemently submitted that case of the prosecution as stated is that on account of a marpeet occurred between the accused persons named in the FIR, including the applicant, on 06.10.2022 at 2.00 p.m, and the deceased, the deceased had sustained injuries which has not been supported by the post mortem report as two simple injuries are shown to have been sustained by the deceased and his cause of death has not been ascertained due to ante mortem injuries which suggests that the deceased had died in some other way which is not the case of the prosecution.
5. It is also submitted that the incident admittedly had occurred

on 06.10.2022 and till 09.10.2022 no treatment was given to the deceased and the explanation given in this regard by the informant and other prosecution witnesses could not be believed as if there was a flood the FIR could also not be lodged on 11.10.2022.

6. It is further submitted that applicant is in jail in this matter since 29.10.2022 and he is not having any criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty. The other three accused persons, namely, Salia, Afsana and Hasina have been granted bail by the coordinate benches of this Court.

7. Learned A.G.A. opposes the prayer for bail of the applicant.

8. Perusal of the record would reveal that the role of assault has been attributed to the instant applicant with lathi/danda and a danda is also shown to have been recovered from his possession. The post mortem report of the deceased reflects that the cause of death of the deceased was not ascertained despite two injuries have been found on him and it has been submitted with considerable force before this Court that when death of deceased could not be related to any injury, Section 304 IPC may not attract. As even if the death of deceased is ascertained by any other medium, the same is not the case of the prosecution as it is alleged that the deceased had died due to injuries inflicted in the murder occurred on 06.10.2022. In nutshell, contention of learned counsel for the applicant is to the tune that oral evidence and medical evidence is in direct contrast. The applicant is in jail since 29.10.2022 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

9. Let the applicant/Abdul Hakeem involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

10. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

11. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

12. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 30.10.2023

Renu/-