

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 426 of 2023

Applicant :- Smt. Neelam Kori

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

Counsel for Applicant :- Rohit Upadhyay, Dinesh Chandra, Pranvesh Awasthi

Counsel for Opposite Party :- G.A., Anjani Kumar Dvivedi

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Dinesh Chandra, learned counsel for the accused/applicant, learned A.G.A. for the State as well as Shri Anjani Kumar Dvivedi, learned counsel appearing for the informant/complainant and perused the record.

2. This bail application has been moved by the accused/applicant- **Smt. Neelam Kori** for grant of bail, in Case Crime No. 216 of 2022, under Sections 323, 304, 504 IPC, Police Station Dhanpatganj, District Sultanpur, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and she has not committed any offence as claimed by the prosecution.

4. It is further submitted that the FIR, which appears to have been lodged on 25.9.2022, would reveal that the role of catching hold the deceased by her hair has been attributed to the applicant while the role of assault with 'lathi' has been assigned to the co-accused Chhote Lal and in the statement of the informant recorded under Section 161 CrPC, the initial assault with 'lathi' has been attributed to the applicant. However, thereafter it is stated that the husband of the applicant after snatching 'lathi' from the applicant assaulted the deceased, whereby she sustained grievous injuries.

5. It is also submitted that an independent witness namely, Indu Devi has also attributed the role of catching hold and assault by 'lathi' to the applicant and however, specific role of assault with 'lathi' has been attributed to the husband of the deceased.

6. While drawing the attention of this Court towards the statements of the injured namely, Kismata Devi and Pawan Kumar, it is submitted that the general role of assault with 'lathi' has been attributed to the applicant as well as to the co-accused Chhote Lal (husband of the applicant).

7. Highlighting the above facts, it is vehemently submitted that the applicant is a lady and she would not be supposed to strike with such force whereby the fracture of temporal bone may be caused and in all probability, the assault by which fracture of the skull has been caused, could only be given by the co-accused Chhote Lal.

8. While drawing the attention of this Court towards the post mortem report of the deceased, it is vehemently submitted that the medical evidence is in direct contrast with the oral testimony as in the post mortem report, an incised wound has also been found on temporal region of the skull and the same could not be caused by 'lathi' and thus, the whole prosecution case is in the realm of suspicion and hypothesis. The applicant being a lady is in jail in this case since 25.9.2022 and she is not having any criminal antecedents. Charge sheet in the matter has already been filed and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

9. Learned A.G.A., on the other hand, submits that the specific role of assault has been assigned to the applicant and a 'lathi' is also shown to have been recovered on the joint pointing of the accused persons.

10. Similarly, learned counsel for the informant/complainant has opposed the prayer for bail of the applicant and submitted that the specific role of assault with 'lathi' has been assigned to the applicant and keeping in view the injuries sustained by the deceased, the applicant is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that in the post mortem report of the deceased, two injuries have been noted. One injury is in the nature of lacerated wound which has been shown on the frontoparietal region of the skull, while the second injury has been shown as an incised wound on head i.e., temporal parietal region of the skull. It is with regard to the second injury which is of the nature of the incised wound. Learned counsel for the applicant has submitted that this injury may not be caused by a blunt object and, therefore, the whole case of the prosecution is under the cloud of suspicion. Another defence of learned counsel for the applicant appears to be that the applicant being a lady may not strike the 'lathi' with such a force whereby the fracture of the skull may be caused. The FIR of this case appears to have been lodged with sufficient promptness and the role of the instant applicant has been differentiated therein as the role of only catching hold of the hair of the deceased has been attributed to her, while the strike of fatal blow's has been

assigned to her husband namely, Chhote Lal. Thus, the role of the applicant appears to be distinguishable from that of her husband. Moreover, the applicant is in jail in this case since 25.9.2022 without any criminal history. Charge sheet in the matter has already been filed. Her presence could be secured before the trial court by placing any adequate conditions.

12. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

13. Let the applicant- **Smt. Neelam Kori** involved in the aforesaid case be released on bail on 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.

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

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

16. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

17. The trial court is directed to proceed with the trial with utmost expedition and make all out efforts to conclude the same within one year from the production of certified copy of this order.

Order Date :- 19.12.2023/Shravan