

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 747 of 2023

Applicant :- Kaushal Kishore And Another

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

Counsel for Applicant :- Ambrish Kumar Dwivedi, Jalaj Kumar Gupta, Mohd Javed, Ram Kumar Singh, Ravi Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Ram Kumar Singh, learned counsel for the accused-applicants as well as learned counsel representing the State and perused the record.
2. This bail application has been moved by the accused/applicants namely **Kaushal Kishore** and **Shanu** for grant of bail, in Case Crime No.381 of 2022, under Section 304 I.P.C., Police Station Pisawan, District Sitapur, during trial.
3. Learned counsel for the accused-applicants while pressing the bail application submits that the applicants have been falsely implicated in this case and they have not committed any offence as claimed by the prosecution.
4. It is further submitted that mother of the deceased, prior to lodging of the F.I.R. by a stranger, had given an application to the Station House Officer, Police Station Pisawan, District Sitapur informing that the deceased Drigpal @ Devendra Kumar had died as his dead body was found in a *nali* situated outside her house and nobody was named therein, however, the informant, who was not having any relation with the deceased or his family, had lodged the F.I.R. probably at the instance of the concerned police and two witnesses appear to have been procured namely Lakhan and Ram Niwas, who claimed to have seen the applicants assaulting the deceased (their real brother) and only on account of the statement given by these two witnesses, charge sheet has been filed against the applicants.
5. It is further submitted that the motive, which has been assigned for committing the crime of such magnitude, is very weak. There is nothing collected by the investigating officer, which may suggest that the deceased or the applicants were having any dispute pertaining to any immovable property and the same has been carved out subsequently in order to falsely

implicate the applicants.

6. It is also submitted that it is admitted to the prosecution that the deceased was a heavy drunkard and he might have sustained injuries anywhere after consuming liquor. It is further submitted that it is highly improbable that the dead body of the deceased might have remained outside the house for the whole night and no person of his family had taken care of the same including his mother and therefore, it is prima facie reflected that the deceased had got the injuries somewhere else and had died of the same.

7. It is also submitted that the applicants are in jail in this case since 26.09.2022 and they are 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 the applicants may flee from the course of law or may otherwise misuse the liberty.

8. Learned A.G.A., however, opposes the prayer of bail of the applicants on the ground that the applicants are accused of committing an heinous offence and having regard to the material/evidence available against the applicants, they are not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicants.

9. Having heard learned counsel for the parties and having perused the record, it is evident that information of finding dead body of the deceased was given by his mother on 23.09.2022 to the concerned police station, whereon the inquest was drawn and the postmortem of the deceased was performed. 7 injuries of the nature of lacerated wounds, contusions and abrasions were found on different parts of the body of the deceased and cause of death has been ascertained due to coma as a result of ante mortem head injury, however, viscera was also preserved. There are two witnesses namely Lakhan and Ram Niwas, who had deposed that they have seen the applicants assaulting their real brother. It appears to be an admitted case that the mother of the deceased while giving information of death on 23.09.2022 had not imputed any allegation against the applicants. It is also surfaced during the course of deliberations that an affidavit was given by the informant Siyaram to the concerned police station alleging therein that the application on the basis of which F.I.R. has been lodged, has been procured by the concerned police after pressurizing him. The applicants are in jail in this case since 26.09.2022 and they are not having any criminal history. Charge sheet in this case has already been filed. The presence of the applicants could be secured before the trial court by placing adequate conditions.

10. Having regard to the overall facts and circumstances of the case and 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 of the case, I am of the considered view that applicants have made out a case for bail. The bail application is thus **allowed**.

11. Let the accused/applicants namely **Kaushal Kishore** and **Shanu** involved in above-mentioned case, be released on bail on their furnishing personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

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

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

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

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

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

14. 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 of this Court on the merits of the case.

Order Date :- 27.10.2023

Anupam S/-