

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1386 of 2023

Applicant :- Umesh

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

Counsel for Applicant :- Narendra Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Narendra Gupta, 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 by the accused/applicant- **Umesh** for grant of bail, in Case Crime No. 225/2022, under Sections 323, 304 of IPC, Police Station Rampurkalan, District Sitapur, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that applicant has falsely been implicated in this case. The incident is of night and there was no source of light available wherein the applicant or co-accused persons would be identified and it appears that offence has been committed by some other persons on account of village enmity and the name of the applicant and other co-accused persons have been dragged in this case.

4. It is further submitted that in the incident, assault with Belcha (spade) has been attributed to the co-accused Manoj Singh, while the role of the applicant is shown to have committing assault with Danda and Belcha and Danda is shown to have been recovered on the pointing of the applicant and co-accused Manoj Singh, however, Manoj Singh has been granted bail by a Coordinate Bench of this Court, vide order dated 17.11.2023 passed in Criminal Appeal No. 1217 of 2023 and the role of the applicant is identical or on a better footing than the co-accused Manoj Singh.

5. It is also submitted that criminal history of one case has been explained in the rejoinder affidavit dated 25.5.2023 wherein the applicant has been granted bail and after the involvement of the applicant in the instant case, the provisions of Gangsters Act has also been invoked in that case.

6. It is also submitted that the applicant is in jail in this case

since 25.8.2022 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.

7. Learned A.G.A. on the other hand opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence but could not controvert the fact that identically placed co-accused Manoj Singh has been granted bail by a Coordinate Bench of this court.

8. Having heard learned counsel for the parties and having perused the record, it is reflected that a Coordinate Bench of this Court had granted bail to co-accused Manoj Singh, vide order dated 7.11.2023 passed in Criminal Appeal No. 1217 of 2023. The relevant portion of the order wherein the reasons have been given by the Coordinate Bench in order to extend the benefit of bail to co-accused Manoj Singh is reproduced as under:-

"11. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also in the absence of any convincing material to indicate the possibility of tampering with the evidence and as per the version of the F.I.R., on 23.08.2022, the informant alongwith Pradeep, Akshay, Mahesh and Gopi all are resident of same village Purayni, belonging to Behaliya (Schedule Caste) at 6:00 P.M. left their home for poaching birds at village Bambhaur, Hanuman Temple and after spreading net over the trees, the informant alongwith Pradeep and Gopi went to drink water. As soon as, they reached near Chaudagra, two persons came at about 10:00 P.M. and asked them as to why they were wandering there and after knowing that they came here for poaching birds those persons started assaulting them with iron rod and stick, these allegations do not corroborate with the statement of injured, namely-Uddan, which was recorded before the court below 16.03.2023, wherein he has not supported the prosecution story and stated that the injuries that were caused to him were caused by village mob and he could not identify any specific person as to who had beaten him or the other injured persons. It is also stated that later on, injured, namely-Gopi (deceased) was treated in Hospital and was sent back home and further considering the fact that the other injured, namely-Pradeep in his statement recorded before the court below on 10.05.2023 has also not supported the prosecution story and has clearly stated that the village mob came and started beating them with lathi-danda and iron rod but he has not assigned any specific role to the appellant, he also stated that he could not identify any person in the village mob as to who has beaten him, he further leveled a general allegation of assaulting the injured persons by the village mob. Injured, namely-Pradeep also stated that he hid himself in a sugarcane field, thus, he could not identify the appellant and other accused persons and also considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the case of Dataram Singh vs. State of UP and another, reported in (2018) 3 SCC 22, this Court is of the view that the learned court below has failed to appreciate the material available on

record. The order passed by the court below is liable to be set aside.

12. Accordingly, the appeal is allowed. Consequently, the impugned order dated 20.01.2023 passed by learned Special Judge, SC/ST Act, Sitapur in Bail Application No.692/2022; Manoj Singh vs. State of U.P. arising out of F.I.R. No.225/2022, under Section 323 and 304 I.P.C. and Section 3(2) (v) of SC/ST Act, registered at Police Station - Rampurkalan, District -Sitapur is hereby set aside and reversed."

9. The role of the applicant is beyond doubt identical or on a better footing than co-accused Manoj Singh. Nothing has been brought in the knowledge of this Court which may justify that the order whereby the facility of bail was extended to Manoj Singh has been challenged at any higher forum or has been cancelled by the same court. Criminal history of one case has adequately been explained. The applicant is in jail in this case since 25.8.2022. Charge sheet in this case has already been submitted. His presence may be secured before the trial court by placing adequate conditions.

10. 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**.

11. Let the applicant- **Umesh** 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.

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 applicant and sureties be verified by the court concerned before the bonds are accepted.

14. 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.

Order Date :- 7.12.2023/Muk