

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1928 of 2023

Applicant :- Deshraj

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

Counsel for Applicant :- Anurag Singh, Ankit Tripathi, Bhupendra Singh Bisht

Counsel for Opposite Party :- G.A., Mohd. Waris Farooqui, Sanjay Kumar

Hon'ble Brij Raj Singh, J.

1. Case called out. None appears on behalf of the complainant.
2. Heard learned counsel for the applicant and Sri Vishwas Saraswat, learned A.G.A. for the State.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No. 263 of 2021 under sections 460, 411 and 302 IPC, Police Station Talgaon District Sitapur.
4. It has been submitted by learned counsel for the applicant that FIR has been lodged by the complainant-Ram Het/husband of the deceased stating therein that on 24/25.07.2021 at about 02.00 p.m. in the night when the complainant and his family members were sleeping in his house, some unknown persons entered into his house and they had stolen certain articles i.e. Peppermint oil, jewelries and cash. The wife of the complainant woke up and saw that 2-3 thieves were going along with stolen articles. She raised an alarm and also tried to catch them on which scuffle took place and one thief had fired at her by firearm. Thereafter, she was sent for medical treatment in the hospital but she died due to fire arm injuries.
5. Learned counsel for the applicant has submitted that the applicant is not named by the applicant. He has submitted that on the confessional statement, contrived pistol has been recovered and while recovery was made at that time the complainant was present but he did not identify the accused applicant. In support of his argument, he has placed reliance in para 27.1 of the judgment of

Hon'ble Supreme Court dated 06.11.2023 passed in **Criminal Appeal No. 866 of 2011** in the case of **Manjunath and others Vs. State of Karnataka** and has submitted that the reliance of recovery from open field cannot be placed.

6. Learned counsel for the applicant has submitted that the statement of brother Santosh was recorded but he has also not named the applicant. He has also submitted that all the eye witnesses, who have been examined by the police have stated that the applicant committed murder and they identified the accused but their statements cannot be relied. In support of his arguments, learned counsel for the applicant has relied upon para-13 of the judgment passed by Hon'ble Supreme Court in the case of **Parvat Singh and others Vs. State of Madhya Pradesh** reported in (2020) 4 SCC, 33.

7. It has been submitted by learned counsel for the applicant that co-accused Sipahi @ Shyamu, Vinod and Pankaj Lodh have been granted bail by coordinate Bench this Court vide orders dated 17.12.2021, 02.02.2022 and 05.03.2022 passed in Criminal Misc. Bail Application Nos.14898 of 2021, 966 of 2022 and 15192 of 2021 respectively, therefore, the applicant is also entitled for bail.

8. On the other hand, Sri Vishwas Saraswat, learned A.G.A. has opposed the prayer for bail and he has invited attention of this Court towards the statements of Anita, Anjali, Santosh, Chameli, Pankaj and also the independent witnesses, namely Nand Kishore, Rajendra Prasad and Sarvesh. All the witnesses have identify the accused and they have stated that accused- applicant was working as labouror and doing the work of Shuttering in the house of brother of the complainant and all of them have stated that the applicant had fired by firearm at the deceased and there is single shot which is caused to the deceased and she died out of said injury.

9. Learned Additional Government Advocate has further submitted that the applicant has seven criminal cases to his credit. He has also submitted that on his pointing out recovery of firearm is made which is said to be recovered from his possession.

10. Learned Additional Government Advocate has further submitted that the role of the accused- applicant is assigned that he had fired by firearm at the deceased and

the role of other co-accused is not similar, therefore his case is distinguishable with other co-accused, therefore, the applicant is not entitled for bail.

11. After hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that the accused-applicant was working as labourer and doing the work of Shuttering in the house of brother of the complainant and the argument that eleven persons of the same village had identify the accused applicant and have stated that the accused-applicant had fired at the deceased. The applicant and other co-accused came to the house and committed dacoity and thereafter murder was committed, therefore, therefore, I am of the opinion that the applicant is not entitled to be released on bail.

12. Accordingly, the bail application of the **applicant-Deshraj** is **rejected**. However, learned trial court is directed to conclude the trial, without being influenced the observations made hereinabove, within a period of one year from the date a certified copy of this order is produced before it.

Order Date :- 19.12.2023

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