

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3705 of 2023

Applicant :- Anubhav @ Anubhav Viswakarma

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

Counsel for Applicant :- Desh Raj Chaurasiya, Anand Prakash Pandey, Umesh Chandra

Counsel for Opposite Party :- G.A., Santosh Kumar Yadav, Vishal Kumar Yadav

Hon'ble Brij Raj Singh, J.

1. This Court had passed an order on 18.05.2023, that the case will not be adjourned on the request of learned counsel for complainant.

2. Today, case is called out. None is present on behalf of complainant and illness slip has been sent by learned counsel for complainant. I have heard Shri Ravish Chandra Mishra, learned A.G.A for the State.

3. Heard Shri Umesh Chandra, learned counsel for the accused-applicant as well as Shri Ravish Chandra Mishra, learned A.G.A. for the State and perused the record.

4. This bail application has been filed seeking release of the accused/applicant **Anubhav @ Anubhav Viswakarma** on bail, who is involved in Case Crime No. 400 of 2022 under Sections 147, 148, 149, 504, 506, 342, 323, 307, 308 I.P.C, Police Station Raniganj, District Pratapgarh.

5. Learned counsel for the applicant submitted that the complainant is the wife of the deceased and admittedly, she is not the eye witness. The complainant, in the First Information Report has mentioned that her husband had gone for his duty to ECHS Army Hospital, Pratapgarh, and after 2 km, at Nishad Chauraha at about 4:30 P.M, the applicant along with other four co-accused assaulted the deceased with an axe, rod and stick due to which he sustained injuries and became unconscious. She further mentioned that her nephew Mahendra Pratap Yadav, whose shop was near the place of incident, came to the place of occurrence and witnessed the said incident and took the injured to the hospital, Phaphamau, Pratapgarh, where the injured was medically treated. Learned counsel for applicant has submitted that the First Information Report was lodged in Case Crime No. 400 of 2022 under Sections 147, 148, 149, 504, 506, 342, 323, 307, 308 I.P.C. He further submitted that after the death of the deceased, Section 302 I.P.C has been added and Sections 307, 308

and 342 I.P.C, have been deleted. He further submitted that there is no independent eye witness of the case because the alleged eye witness namely Mahendra Pratap Yadav, examined under Section 161 Cr.P.C has falsely claimed that he had seen the incident and had taken the deceased to the CHC Raniganj, Pratapgarh for medical treatment, whereas as per RTI reply dated 22.02.2023, filed by learned counsel for applicant along with the supplementary affidavit dated 29.08.2023, it is mentioned that the deceased was brought to the hospital CHC Raniganj, Pratapgarh by one Ram Jatan.

6. Learned counsel for the applicant further submitted that the although post-mortem report indicates two fatal injuries caused to the deceased, but general allegation of causing injury with a stick, axe and rod is levelled against all the five persons and no specific role out of the five accused persons has been assigned to cause the fatal injury to the deceased. He further stated that there is no previous criminal history of the applicant and he is languishing in jail since 01.11.2022.

7. Learned AGA has opposed the prayer of bail of the applicant and has submitted that alleged eye witness namely Mahendra Yadav has supported the prosecution case, therefore bail is liable to be rejected.

8. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that there is no eye witness of the case, the argument that general allegation of assault has been levelled against all the five accused persons, the argument that out of five accused persons nobody has been assigned the specific role of causing the fatal injury to the deceased, I find it to be a fit case for grant of bail.

9. Accordingly, the bail application is **allowed**.

10. Let the applicant **Anubhav @ Anubhav Viswakarma** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against her under Section 229-

A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

11. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 22.11.2023
DiVYa/Rajneesh