

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4488
of 2023

Applicant :- Nisar Ahmed

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home
Lucknow

Counsel for Applicant :- R.B.S. Rathaur

Counsel for Opposite Party :- G.A., Sumit Kumar Srivastava

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri R.B.S. Rathaur, learned counsel for the accused/applicant, Shri Sumit Kumar Srivastava, learned counsel for complainant/ informant as well as learned AGA for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Nisar Ahmed** for grant of bail, in Case Crime No. 0057/2022, under Sections 147, 148, 149, 323, 504, 506, 452, 308 and 304 IPC, Police Station Baghrai, District Pratapgarh, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and the applicant has been arrayed as an accused in this case only on account of political rivalry as he was the Member of Kshetra Panchayat.

4. It is further submitted that the First Information Report of this case has been lodged by one Zubaida Khatun alleging there in that 7 accused persons named in the FIR including the applicant had assaulted her father-in-law, Mohd. Ishaque, her husband Mohd. Zaheer and her son Mohd. Suhel on 19.2.2022 at about 7.00 A.M. by 'Lathi, Danda, Kulhari and Gadala', whereby her father-in-law Ishaque sustained grievous injuries and became unconscious and when he was taken to the District hospital, from where he was referred to Swaroop Rani Hospital. The FIR amongst other penal sections was also registered under section 308 IPC and as injured Ishaque died during the course

of treatment, the case was converted under Section 304 IPC and the charge sheet was also filed amongst other under Section 304 IPC also.

5. It is vehemently submitted that in the First Information Report, which has been lodged by an eye witness, general role of assault has been assigned to all the accused persons named in the FIR and no specific role of any kind has been assigned to the applicant and apart from the deceased Ishaque, two other persons are shown in the FIR, who are said to have been assaulted, namely, husband of the applicant- Mohd. Zaheer and son of the informant Mohd. Suhel and thus these two witnesses named in the FIR were the star witness of the crime, while Investigating Officer has recorded the statements of Mohd. Sahil and Nasreen who have assigned a specific role of assault to the instant applicant with a 'Danda' on the head of the deceased- Ishaque.

6. It is vehemently submitted that in the statement of the informant, namely, Zubaida Khatoon no specific role has been assigned to the instant applicant and general role of assault has been attributed to all the accused persons.

7. It is also submitted that Investigating Officer has also recorded the statement of independent witnesses, namely, Ram Sumer, Patel, Bhullar Maurya, Ismail Shaikh and Sanjay and all of them have stated that quarrel and scuffle was going on between Ishaque and Dharmpal and the applicant was infact attempting to persuade them not to fight and in this process Ishaque had died and his head struck with the wall where he sustained injuries.

8. It is also submitted that the applicant is in jail in this case since 3.3.2022 and till now only two prosecution witnesses, namely, Zubaida Khatoon and Mohd. Sahil have been recorded so far and keeping in view the opportunity of witness cited in the charge sheet. The trial is not going to conclude in near future. The applicant is in jail in this case since 3.3.2022 and he is not having any criminal antecedent. Charge sheet in this case 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. It is further submitted that other accused persons have been granted bail except the applicant while the role of the applicant is similar to those who have been granted bail.

10. Learned AGA on the other hand submits that the applicant is accused of committing heinous offence and therefore he is not entitled to be released on bail as specific role of assault on head has been assigned to the applicant.

11. Shri Sumit Kumar Srivastava, learned counsel for complainant vehemently opposes the prayer of bail of the applicant on the ground that specific role of hitting with 'Danda' on the head of the deceased has been assigned to the instant applicant which is also corroborated by the medical evidence as in the injury report of the deceased as well as in the postmortem report, the injuries found on the head of the deceased may only be caused by 'Danda'. It is also submitted that the witnesses of fact are being recorded before the trial court and release of the applicant on bail at this juncture may influence the witnesses of fact, adversely.

12. Having heard learned counsel for the parties and having perused the record, it is transpired that specific role of assault with 'Danda' has been attributed to the instant applicant. In the injury report as well as in the postmortem report of the deceased injuries have been found on the head beneath which hematoma was also found and thus injuries sustained by deceased has resulted in his death. Two bail applications of the applicant has already been rejected.

13. Keeping in view all the facts and circumstances of the case and the specific role of assault assigned to the instant applicant, I do not find any good ground to accept this 3rd bail application of the applicant, more-so when other witnesses of the fact are still to be recorded before the Trial court. Thus, at this stage prayer of bail of the applicant is ***rejected***.

14. The trial court is, however, directed to record the statement of the remaining witnesses of fact with utmost expedition and the complainant who is represented before this Court shall present before the trial court all the witnesses of fact on each and every date on which date case would be listed before the trial court. The applicant may again approach this court for

renewal of his prayer of bail when all the witnesses of fact are examined before the trial court or after 3 months from today, which ever is earlier.

15. It is clarified that rejection of this bail application shall not be having any bearing on the fate of bail application, which the applicant may move in future.

16. A copy of this order be immediately sent to the trial court through Sessions Judge concerned for strict compliance.

17. 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 :- 30.11.2023

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