

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4916 of 2022

Applicant :- Sudhir And Another

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. / Prin. Secy. Home Civil Secrtt. Lko.

Counsel for Applicant :- Sudhanshu S. Tripathi

Counsel for Opposite Party :- G.A., Piyush Kumar
Giri, Ravindra Kumar Singh

Hon'ble Mohd. Faiz Alam Khan, J.

1. The name of Shri Piyush Kumar Giri and Shri Ravindra Kumar Singh is printed in the cause list as learned counsel for the complainant/informant, however, they are not present nor any request has been made on their behalf to adjourn the case.

2. Heard Shri Sudhanshu S. Tripathi, learned counsel for the accused-applicants as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicants- **Sudhir** and **Sujeet** for grant of bail, in Case Crime No. 374 of 2021, under Sections 323, 324, 504, 506 and 304/34 I.P.C., Police Station Ajgain, District Unnao, during trial.

4. Learned counsel for the accused-applicants while pressing the bail application submits that it is a case of false implication. In the first information report, which has been lodged by the informant, namely, Smt. Jamunadei, general role of assault has been assigned to all the accused persons named in the F.I.R. However, in the statement of the informant as well as the injured eye witnesses, namely, Raj Bahadur and Nanhke, the role of carrying an 'axe' (kulhari) has been assigned to co-accused Virendra, while the role of carrying 'lathi/danda' has been assigned to the instant applicants and no specific or overt act has been assigned as to who has assaulted which part of the deceased.

5. While drawing the attention of this Court towards the postmortem report of the deceased, it is submitted that a 'stitched wound' has been found on the left side of the skull of the deceased beneath which 'haematoma' was found and contused swelling was also found on the left side of skull beneath which also 'haematoma' was found and the brain was

found congested and lacerated and the cause of death has been ascertained as 'coma' due to 'antemortem head injury'.

6. It is vehemently submitted that four prosecution witnesses have been testified before the trial Court till now and the three eye witnesses, namely, Jamunadei (Informant/P.W.-1), P.W.2/Raj Bahadur and P.W.-4/Sunny have assigned specific role of assault on the head of the deceased by an 'axe' (kulhari) to co-accused Virendra and since the co-accused Virendra was carrying 'kulhari', the intention to cause death could only be attributed to him, as the incident according to the own version of the prosecution has taken place in a spur of moment without there being any pre-meditation.

7. It is further submitted that even if the case of the prosecution is taken on its face, apart from the applicants, role of assault with 'lathi-danda' has also assigned to co-accused Rajendra and, therefore, at this stage it could not be ascertained with certainty as to who was the author of the second injury found on the top of the head of the deceased.

8. It is also submitted that applicants have cooperated so far with the expeditious disposal of the case and they undertake that they will remain present before the trial court as and when their presence would be required and shall not seek any adjournment especially on the dates when the prosecution witnesses would be in attendance. Applicants are languishing in jail in this case since 26.10.2021 and they are not having any criminal history and also there is no possibility of tampering with the witnesses as almost all the witnesses of fact have been testified before the trial Court. There is no apprehension that after being released on bail they may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A., however, opposes the prayer of bail of the applicants on the ground that the applicants are instrumental in assaulting the deceased and other injured persons and the recovery of 'danda' and 'kulhari' (axe) has also been recovered on the joint pointing of the applicants and other co-accused persons and, therefore, they are not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that in the F.I.R., general role of assault has been assigned to all the accused persons named therein and even no weapon of assault has been assigned to any accused. It was in the statement of the prosecution witnesses recorded under Section 161 Cr.P.C., the role of carrying a 'kulhari/axe' has been assigned to co-accused Virendra, while

other co-accused persons were assigned the role of carrying and assaulting with 'lathi-danda'. Two fatal injuries have been found on the head of the deceased. The nature of one of the injury has been ascertained as contused swelling, which may be attributed to 'lathi/danda', while the other injury, which have been found as 'stitched wound', the nature of that may not be assessed as the same was found stitched. Reference in this regard has been made by learned counsel for the applicant to the three prosecution eye witnesses, namely, Jamunadei (Informant/P.W.-1), P.W.2/Raj Bahadur and P.W.-4/Sunny, who all in one voice have attributed the role of assault on the head of the deceased, with an 'axe' to co-accused Virendra and the defence of the applicants is that having regard to the evidence so far produced before the trial Court, 'stitched wound' may only be attributed to co-accused Virendra. With regard to the another wound of contused nature, found on the top of the skull of the deceased, it is vehemently submitted that three accused persons are shown to be carrying 'lathi-danda' and, therefore, it could not be ascertained with certainty that the applicants may be the author of the same. It is also the defence of the applicants that since they are shown carrying 'lathi', the intention to cause death may not be evident as the incident had occurred in a spur of moment without there being any pre-meditation and since 'lathi' has been attributed to them, the same by itself may not be sufficient to infer intention to cause death. Applicants are languishing in jail in this case since 26.10.2021 without any criminal antecedents. Almost all the witnesses of fact have been testified before the trial Court and the presence of the applicants may be secured before the trial court by placing adequate conditions/restrictions.

11. 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 applicant has made out a case for bail. The bail application is thus **allowed**.

12. Let the accused/applicants- **Sudhir** and **Sujeet** involved in above-mentioned case, be released on bail on their furnishing a personal bond with **two heavy sureties** in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicants will remain present before the trial court on each and every date whereon their presence would be required by the trial court and shall not seek any adjournment especially on the dates when the prosecution witnesses would be in attendance and undertaking to this

effect shall also be given by the applicants-accused before the trial court within 15 days from their actual release from the prison.

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

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

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

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

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

15. 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 on the merits of the case.

Order Date :- 7.12.2023

Praveen