

**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 4896 of 2023

**Applicant :-** Ram Pyare Yadav

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

**Counsel for Applicant :-** Avinash Chandra, Pravin Kumar Singh, Yogeshwar Sharan Srivastava

**Counsel for Opposite Party :-** G.A.

**Hon'ble Brij Raj Singh, J.**

1. Supplementary rejoinder affidavit filed on behalf of the applicant, is taken on record.
2. Heard Sri Yogeshwar Sharan Srivastava, learned counsel for the applicant and Sri M.V.S. Chauhan, 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.153 of 1995, under sections 147, 148, 304 IPC, Police Station Paraspur District Gonda.
4. It has been submitted by learned counsel for the applicant that FIR has been lodged by the complainant/ wife of the deceased in which she has levelled the allegation that her husband was taken into custody by the police and thereafter he was beaten by them. She has stated in the FIR that her husband died in the custody of the police and the postmortem was conducted and thereafter the police wanted to cremate her husband but on protest made by the villagers, police had run away from the place.
5. It has been submitted by learned counsel for the applicant that the deceased was a criminal and he had gone in the village for doing theft and he was caught by the villagers and thereafter he was beaten by the villagers and died due to assault made by the villagers.
6. He has invited attention of this Court towards the statement of one Babu Chirimar, who has stated that the deceased was beaten by the villagers because he had come for the act of theft.

7. It has also been submitted by learned counsel for the applicant that final report was submitted on 02.06.1996 thereafter the matter was handed over for investigation to CBCID on 18.04.2006 and the charge-sheet was filed against 19 persons. He has submitted that the applicant was not named in the FIR and some of the co-accused had filed an Application U/S 482 No.5549 of 2023 (Bhawani Shanker Singh and others Vs. State of U.P. and another) before this Court in which a detailed interim order has been passed on 30.05.2023 and the criminal proceedings against them have been stayed. However, the applicant has been arrested and he has been sent to jail in the same case.

8. It has been submitted by learned counsel for the applicant that in respect of co-accused, trial has been concluded and 11 villagers have been acquitted. He has submitted that on the same set of fact other co-accused have been acquitted by the trial court and now it can be presumed that the applicant is innocent. In support of his arguments, learned counsel for the applicant has relied upon the judgments of Hon'ble Supreme Court in para -15 of **Pritam Singh and another Vs. The State of Punjab** reported in AIR 1956 Supreme Court 415 and the judgments of this Court in the case of **Diwan Singh Vs. The State** reported in 1966 CrL.J. 2, **Mahir Husain Vs. State of U.P. and another** passed in Application U/S 482 No.18857 of 2020 and **Faruk @ Gaffar Vs. State of U.P.** passed Criminal Appeal U/S 374 Cr.P.C. No. 98 of 2008.

9. It has been submitted by learned counsel for the applicant that the applicant is 69 years old person and he is suffering from various ailments. There is no intention to kill the deceased and on a very weak evidence, the applicant has been made accused. The applicant is in jail since 31.01.2023.

10. On the other hand, Sri M.V.S. Chauhan, learned A.G.A. has invited attention towards the statement of complainant recorded under section 161 Cr.P.C. which is corroborating with the version of the FIR. She has stated that in the police station, constable and Sub Inspector had beaten her husband with sticks and they had taken her husband to the police station and at about 2:30 in the night of Friday, the dead body of her husband was brought to her house and her husband was kept in custody for three days. S.I. had put pressure on her to take Rs.20000/- and asked her to settle the issue. She has further stated that she had gone to Gonda and an

application was written by Advocate but no action was taken by the police of the police station concerned, then she met to Superintendent of Police but no FIR was lodged. Thereafter she went to Lucknow and met the personal secretary of Governor, thereafter FIR was lodged.

**11.** Learned Additional Government Advocate has further invited attention towards the postmortem report which indicates that eight injuries were found on the person of the deceased and the postmortem of the deceased was conducted at 4;45 p.m. on 22.12.1995 and the doctor has opined that death occurred prior to half day. Thus the case of the prosecution as set up in the FIR is corroborating with the postmortem report.

**12.** It has been submitted by learned A.G.A. that there appears two set of evidence; firstly, the police has been made accused and secondly on the basis of statement of Babu Chirimar, the villagers were made accused.

**13.** Learned Additional Government Advocate has submitted that the complainant (P.W.-1) has specifically stated before the trial court that policemen including the applicant had beaten her husband in the police custody. He has also submitted that acquittal order would not help because the evidence is still to be adduced on record in respect of the applicant.

**14.** After hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that the deceased died in the custody of police, the argument that policemen including the applicant had beaten the deceased, who died in custody, the argument that postmortem report is corroborating with the prosecution case as evident in the FIR and the argument that the prosecution case has been established also with the statement recorded under section 161 Cr.P.C. of the complainant, who had narrated in detail as to how her husband was beaten by the police in custody, therefore, I am of the opinion that the applicant is not entitled to be released on bail.

**15.** Accordingly, the bail application of the **applicant-Ram Pyare Yadav** is **rejected** at this stage. The trial court would not be influenced by the observations made herein above by this Court

**Order Date :- 6.12.2023/dk**