

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4887 of 2023

Applicant :- Ankit

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

Counsel for Applicant :- Kaushal Kishore, Vaibhav Srivastava

Counsel for Opposite Party :- G.A., Firoz Ahmad Khan

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Vaibhav Srivastava, learned counsel for the accused/applicant, Shri Afjal Husain, Advocate holding brief for Shri Firoz Ahmad Khan, learned counsel for complainant/informant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Ankit** for grant of bail, in Case Crime No. 230 of 2022, under Sections 147, 148, 149, 302, 308, 323, 452, 504, 506, 34, 120B IPC, Police Station Haiderganj, District Faizabad, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The FIR of this case has been lodged by the informant- Rekha on 2.11.2022, naming the applicant and other 2 accused persons, namely, Vijay and Karan along with 5-6 unknown persons and it is stated therein that on the fateful night at about 8.00 P.M. the accused persons named in the FIR and other unknown persons had come to the main door of her house and exhorted each other to kill the deceased- Ram Narain and when he came out, they all assaulted him with '*lathi, danda and iron rod*', when she and her mother attempted to rescue Ram Narain, they were also assaulted. The incident has been seen in the light of an electric bulb and one Sanjay and Ravindra also intervened and during the course of treatment her father had died.

4. Learned counsel for the applicant while drawing the attention of this Court towards the statement and additional statement of the informant recorded under Section 161 Cr.P.C. submits that initially the applicant and other 2 accused persons were named in the FIR along with 5-6 unknown persons and general role of assault with '*lathi, danda and iron rod*' were assigned to all the accused persons and no specific role or any overt act has been assigned and during the course of investigation, in the

additional statement of the informant, the names of those who were named as unknown persons in the FIR were disclosed, thus, it is a case where allegation of assault by all the accused persons has been alleged and no specific role of any kind has been attributed to the instant applicant and thus at this stage it could not be ascertained as to who from amongst the 8 accused persons was the author of the two fatal injuries sustained on the head of the deceased.

5. It is further submitted that the recovery of a '*danda*' as shown on the pointing out of the applicant would also not be of any consequence as the *Fard Baramadi/ recovery memo* placed on record would itself project that the '*danda*' which has been recovered on the pointing out of the applicant may not be used by the applicant as there are two other accused persons who had made disclosure statement that by giving assault they have also thrown a '*danda*' at the same place, therefore the recovery of a '*danda*' may not be attributed to the applicant alone as the other co-accused persons were also present there at the time of recovery.

6. It is also submitted that disclosure statements have also been made by the other co-accused persons pertaining to the assault given by them to the deceased.

7. It is vehemently submitted that so far as the statement and additional statement of the informant is concerned, the identically placed co-accused persons, namely, Sandeep Kumar Gaur, Sandeep Nishad and Pramod Kumar @ Bodhey and Vijay have been granted bail by the Coordinate Benches of this Court as well as this Court vide orders dated 26.7.2023, 5.7.2023, 24.5.2023 and 30.11.2023 passed in Crl. Misc. Bail Application Nos. 7519 of 2023, 5338 of 2023, 4636 of 2023 and 9227 of 2023 respectively and another named accused, namely, Karan Nishad has also been granted bail amongst others on the basis that prima facie his presence at the time of the incident has been found in Surat (Gujrat). It is also submitted that the case of the prosecution has become doubtful as many other accused persons have been added subsequently by the informant and also shown to be assaulting the deceased and other injured persons and they are also shown to have made a disclosure statement stating therein that they have participated in the '*marpeet*' and weapon of assault has also been recovered on their pointing.

8. It is also submitted that the applicant is in jail in this case since 05.11.2022 and he is not having any criminal history and having regard to the pendency of cases before the trial court, the same is not going to conclude in near future. Charge sheet in the

matter has already been submitted 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. Learned A.G.A., however, opposes the prayer for bail but could not dispute the other factual submissions made by the learned counsel for the accused-applicant.

10. Learned counsel representing the complainant/ informant, vehemently opposes the prayer of bail of the applicant on the ground that in this case one person has been done to death and another two have been injured and many grievous injuries have been found on the person of the deceased and the case of the prosecution is consistent against the named accused persons including the applicant, therefore, the applicant could not take any advantage of those who have been granted bail as there is no parity of applicant with those who have been granted bail.

11. Having heard learned counsel for the parties and having perused the record, it is evident that the FIR of this case was lodged by the informant- Rekha who is the daughter of the deceased. In the First Information Report, the applicant was named along with two others and 5-6 unknown persons. General role of assault with '*lathi, danda and iron rod*' has been assigned to all the accused persons. Apart from applicant, the weapon of assault has also been recovered on the pointing of other accused persons and the name of some of those were also not named in the FIR and were disclosed by the informant in her additional statement and if the statement as well as the additional statement of the informant, who is also an eye witness, is taken into account, the role of all the accused persons appears to be identical, except Karan Nishad, whose presence prima facie is shown to have been found in Surat (Gujrat). Karan Nishad as well as the other four identically placed co-accused persons, namely, Sandeep Kumar Gaur, Sandeep Nishad, Pramod Kumar @ Bodhey and Vijay have been granted bail by the Co-ordinate Benches of this Court as well as by this Court. The presence of the applicant may be secured before the trial court. The applicant is in jail in this case since 05.11.2022 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted. His presence may be secured before the trial court by placing adequate conditions.

12. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The

bail application is **allowed**.

13. Let the applicant- **Ankit** involved in the aforesaid case be released on bail on furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

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

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

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

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

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

16. 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 :- 21.12.2023

Gurpreet Singh