

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5461 of 2023

Applicant :- Rajiv Kumar Singh @ Guddu Singh

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

Counsel for Applicant :- Sajeet Singh, Ishan Baghel

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri I.B. Singh, learned Senior Advocate assisted by Shri Ishan Baghel, learned counsel for the accused-applicant 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- **Rajiv Kumar Singh @ Guddu Singh** for grant of bail, in Case Crime No. 852 of 2022, under Sections 34, 302, 323, 504 and 325 I.P.C., Police Station Kotwali City, District Hardoi, during trial.

3. Learned Senior Counsel appearing for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report, which has been lodged by the son of the deceased on 27.10.2022 at Police Station Kotwali City, District Hardoi against four known accused persons including the applicant with the allegations that on 25.10.2022 at about 7 pm. the accused persons named therein in furtherance of a conspiracy started quarreling with the deceased and when they were persuaded to maintain peace they at once started assaulting the deceased and other injured persons. It is further stated that co-accused Saurabh Singh was carrying a 'rifle', while the applicant was carrying a 'danda' and other accused persons, namely, Raman Singh and Rajan Singh were also carrying 'illegal firearms' and on the exhortation given by the applicant, the co-accused Saurabh Singh had fired from licensed rifle of his father, whereby the deceased persons got injured. It is further stated that when their mother came to their rescue, she was also assaulted and one person Rajendra was also injured by the firing made by the accused persons and also that during the treatment the deceased had succumbed to the injuries.

4. Learned Senior Counsel while drawing the attention of this Court towards the statements of Shivam Singh as well as of

Renu Singh and Rajendra Singh (alleged injured persons), submits that even if the case of the prosecution is taken as it is, the role of only 'exhortation' as well as of assault with 'danda' has been assigned to the instant applicant and though, it has been written in the first information report that the assault has been made in furtherance of a conspiracy but if the statement of all the prosecution witnesses are read conjointly, it would emerge that the incident, if any, had occurred in a spur of moment and, therefore, no common intention may be attached to the applicant.

5. It is further submitted that the injuries sustained by injured persons, namely, Ms. Renu Singh and Shivam Singh, may correspond to 'lathi' and the same are simple in nature. While Renu Singh and Rajendra Singh has not imputed anything against the applicant except that Renu Singh had stated about quarrel allegedly occurred between the deceased and applicant. The other two witnesses, namely, Shivam Singh and Saurabh Singh has imputed assault by 'lathi' to the applicant, which is also shown to be recovered from the applicant.

6. It is further submitted that the applicant has been arrayed as an accused only on account of his relation with the other co-accused persons. Applicant is languishing in jail in this case since 29.10.2022 and he is not having any criminal history and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

7. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that in a concerted efforts two persons have been done to death and having regard to the material available against the applicant the applicant, he is not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is reflected that in the incident two deceased persons are shown to have been done to death. The postmortem report of both deceased persons, namely, Shiv Kumar Singh as well as of Avneet Singh, would reveal that they have sustained firearm injuries. Admittedly, the role of only 'exhortation' and assault with 'danda' has been assigned to the instant applicant by the injured/informant Shivam Singh and other independent witness, namely, Savita Singh, while the role of having a scuffle with one of the deceased is asserted by the injured witness Renu Singh and other injured person namely Rajendra Singh has not assigned any role to the applicant, nor he stated that applicant participated in the '*marpeet*'.

9. Thus, what is transpired at this stage is that the role of only exhortation and assault with 'lathi-danda' has been assigned to the instant applicant and there are two injured persons, namely, Shivam Singh and Renu Singh, who have sustained injuries, which may correspond to the 'lathi/danda'. The injuries sustained by these injured persons namely Shivam Singh and Ms. Renu are of the nature of abraded contusion, lacerated wound and traumatic swelling and fracture of right radius bone of Smt. Renu was also found. The prosecution witnesses whose statements have been recorded by investigating officer have stated that initially on the trivial issue of abusing, a quarrel and fight had taken place between applicant and deceased Shiv Kumar and when the other family members of deceased Shiv Kumar came to his rescue, at that point the applicant appears to have called his sons and others and given exhortation. Thus, the incident appears to have occurred all of a sudden in a spur of moment. The role of assault with 'danda' has been assigned to applicant. None of the two deceased persons have sustained any other injury except firearm injuries. Applicant is aged about 53 years and is languishing in jail in this case since 29.10.2022 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions. The role of the applicant is distinguishable and distinct from the role of other accused persons, to whom the role of firing with firearms have been assigned and firearms are also shown to have been recovered on their pointing.

10. 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**.

11. Let the accused/applicant- **Rajiv Kumar Singh @ Guddu Singh** involved in above-mentioned case, be released on bail on his 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 applicant shall not contact or communicate with the informant or any of his family member, either directly/indirectly or through any device and shall not intimidate any of the prosecution witness(s) during the course of trial.

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

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

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

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

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

14. 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 :- 30.10.2023

Praveen