

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6074 of 2023

Applicant :- Smt. Nisha

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

Counsel for Applicant :- Mohammad Alam

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Sri Mahammad Alam, learned counsel for the applicant Sri Akhilesh Kumar Srivastava, learned A.G.A for the State and perused the record.
2. The present bail application has been filed for bail in Case Crime No.325 of 2022 under Section 302, 504, 34 IPC, PS Nagam, district Lucknow.
3. Learned counsel for the applicants has submitted that mother of deceased lodged FIR making allegations that the applicant and co-accused Manoj who is husband of the applicant, both assaulted the deceased with *Chaila* (small piece of wooden stick used for making flame) and with *Silbatta* (small piece of stone used for grinding by hand). It has been submitted that FIR does not indicate that the applicant was armed with *Chaila*, rather, general allegation is levelled that applicant and the co-accused were armed with *Chaila* and *Silbatta*. He has submitted that in the statement of Sundara mother of deceased, the applicant is shown to be armed with *Chaila* and co-accused has been shown to be armed with *Silbatta*. He has submitted that it is improved version and the applicant being lady may be granted bail. He has submitted that post mortem report also does not support the prosecution case.
4. On the other hand, learned AGA Sri Akhilesh Kumar Srivastava has submitted that FIR has been lodged by the brother of the deceased who has mentioned in the FIR that the applicant and co-accused Manoj (brother of the complainant) assaulted the deceased with *Chaila* and *Silbatta*. The deceased received two head injury and one injury on the face. He has submitted that post mortem report indicates that the deceased received one lacerated wound 3.0 cm x 2 cm on the head and one contusion 7.00 cm x 6.0 cm on the back of head and one abraded contusion 3.0 cm x 0.5 cm on the face. He has further

submitted that statement under Section 161 CrPC of the mother of the deceased is clear wherein she has stated that the applicant was armed with *Chaila* and co-accused was armed with *Silbatta* and they had assaulted the deceased. The mother of the deceased has assigned the motive for assault and has stated that she has owned land in her name and property, the applicant and her husband wanted that the property should be given to them, therefore, there was altercation between deceased and the applicant including co-accused, and the applicant and co-accused assaulted the deceased who died. He has further submitted that the motive is clear because the applicant and co-accused who is her husband, wanted to grab the share of other brother that is why, this incident took place.

5. Considering the over all facts and circumstances of the case, the argument that medical report corroborate the prosecution case as stated in the FIR, the argument that the strong motive of property is assigned to the applicant and co-accused in the statement of Sundara mother of deceased, it is not a fit case for bail.

6. Accordingly, the bail application is rejected.

Order Date :- 10.10.2023

Rajneesh JR-PS)