

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6369 of 2022

Applicant :- Bhurey S/O Late Zibrail

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

Counsel for Applicant :- Ram Chandra Dwivedi, Arun Kumar Mishra, Ashok Kumar Mishra, Rama Kant Jayswal

Counsel for Opposite Party :- G.A., Sharvan Kumar Pandey

Hon'ble Brij Raj Singh, J.

1. Heard Shri Rama Kant Jayswal, learned counsel for the applicant, Shri Ravish Chandra Mishra, learned AGA for the State and perused the record.

2. The present bail application has been filed by the applicant **Bhurey** with a prayer to enlarge him on bail in Case Crime No.555 of 2021, under Sections 302, 307, 323, 504, 506 I.P.C. Police Station Kotwali Dehat, District Bahraich.

3. It is contended by learned counsel for the applicant that as per the FIR, it has been mentioned that applicant along with other co-accused Chhottan and Nanke assaulted the deceased and other family members due to which deceased received injuries and later on died in the hospital. It is further contended that though deceased namely Zakir and Nanhe have died but injuries are not specified as to who caused the fatal injuries. PW1 Nehrul-nisha (complainant) and PW2 Mun have not supported the prosecution case in their cross examination and once the PW1 complainant and other witness who belong to the same family have not supported the prosecution case, at this juncture, it cannot be presumed that the applicant has committed offence therefore, the applicant is entitled for bail. The applicant has no criminal history and is languishing in jail since 22.12.2021.

4. On the other hand, Shri Ravish Chandra Mishra, learned AGA for the State has invited attention of this Court towards the post mortem report of Nanhe, Son of Puttan, and has submitted that four injuries have been received by Nanhe and cause of death is coma due to ante mortem injuries. He further submitted that the other deceased namely Zakir had also received four fatal injuries and cause of death is ante mortem head injuries. The injury report of deceased Nanhe, Son of Puttan is as follows:

"Ante mortem injuries:-

(i) Stitched wound 2.0 cm present on right side forehead semi curved shaped just above right eye brow;

(ii) Stitched wound 2.0 cm present on top of skull ;

(iii) Abrasion 3 cm x 2 cm present on right arm 5 cm above right elbow joint ;

(iv) Abrasion 4 cm x 2 cm present left side of abdomen just above pelvic brim.

Cause of death-- Coma due to ante-mortem injury."

The injury report of deceased Zakir is as follows :-

"(i) Ante mortem injuries :-

(i) Stitched wound 6 cm long along x six stitches present on left side of head just above the left ear ;

(ii) Contusion 12 cm x 8 cm present on left side of head just above left ear ;

(iii) Lacerated wound 1 x 1 cm, muscle deep present on right side of face just lateral to right eye ;

(iv) Abraded contusion 4x4 cm present on right side of face just below the right eye."

5. Learned AGA submitted that it is a double murder case and there is strong motive assigned regarding family dispute pertaining to land. He further submitted that the injured witnesses Thunmun and Puta are yet to be examined and unless the version of the injured witness comes, it cannot be said that applicant is innocent. He further submitted that statement of deceased Zakir under Section 161 Cr.P.C. was recorded and he has supported the prosecution case prior to his death. Thus, bail of the applicant is liable to be rejected.

6. Considering the aforesaid facts and circumstances of the case, argument that two injured witnesses namely Thunmun and Puta are yet to be examined ; argument that deceased Zakir in his statement had supported the prosecution case under Section 161 Cr.P.C.; argument that heinous crime had taken place and two persons have died, I think it is not a fit case for grant of bail.

7. The application for bail of applicant **Bhurey** is hereby, rejected.

8. However, the trial court is directed to conclude the trial within six months.

Order Date :- 17.11.2023

Pks