

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7707 of 2023

Applicant :- Jhabbu

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

Counsel for Applicant :- Vikas Sharma, Awadhesh Kumar Pal, Gyan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard 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- **Jhabbu** for grant of bail, in Case Crime No.0561 of 2022, under Sections 304, 323, 504 IPC, Police Station Behata Gokul, District Hardoi, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and the applicant has not committed any offence as claimed by the prosecution.
4. It is further submitted that the FIR of this case has been lodged by the brother of the deceased on 01.11.2022 alleging therein that on the basis of some dispute with regard to the immovable properties, the applicant and other co-accused persons started abusing and assaulting the informant and when his younger brother, namely, Chhotey Lal came for his rescue, he was also assaulted thereby sustaining grievous injuries and died on the same day.
5. Highlighting the above fact, it is vehemently submitted that the dispute is admittedly between the real brothers pertaining to the inheritance of some immovable properties. The applicant is the father of co-accused persons, Nitin and Munish and the postmortem report of the deceased would reveal that he had sustained a single injury on his head beneath which a fracture and hematoma has been found, however, having regard to the nature of injury no intention or knowledge may be imputed to the applicant for committing homicidal death and the same would itself project that the same are done without any intent or knowledge to cause death.

6. It is further submitted that in the First Information Report as well as in the statement of the prosecution witnesses, including of the informant (injured witness), it is stated that the informant was brutally assaulted, however, injury report of the informant would suggest that only two injuries of simple nature have been sustained by him of the nature of lacerated wound and contusion.

7. It is further submitted that even if the case of the prosecution is taken on its face, the incident had occurred in a spur of moment without there being any premeditation and there was no time available for forming of any common intention as admitted case of the prosecution is that when an altercation was going on between the two other real brothers, the deceased intervened and it is at this juncture he was assaulted and sustained injury, therefore, the requisite knowledge for the invocation of Section 304 IPC is patently missing in this case. It is also submitted that identically placed co-accused, Munish (son of the applicant) has already been enlarged on bail by this Court vide order dated 08.11.2023 passed in Criminal Misc. Bail Application No.13280 of 2023.

8. It is also submitted that the applicant is in jail in this case from last one year and the trial has not started yet. He is not having any criminal history 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. on the other hand submits that the applicant is an accused of committing a heinous offence and, therefore, he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is evident that there was a dispute going on between the real brothers pertaining to division of some immovable properties and an altercation took place between applicant and informant- Rajeshwar and it is at this juncture, the deceased intervened between them and sustained injuries and defence of the accused/ applicant appears to be that it is a case of single injury and requisite knowledge and intention required for the purpose of invocation of Section 304 IPC is patently missing and the incident has admittedly occurred in a spur of moment and there was no time for formation of common intention. The applicant is in jail in this case for more than one year and the trial is not expected to be concluded in near future. Identically placed co-accused, Munish (son of the applicant) has been enlarged on bail by this Court.

11. 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.

12. Let the applicant- **Jhabbu** 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.

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

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

15. 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.

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[Mohd. Faiz Alam Khan,J.]

Order Date :- 17.11.2023

MVS/-