

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7791 of 2023

Applicant :- Tarun

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

Counsel for Applicant :- Mithlesh, Madhulika Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh, J.

1. Heard learned counsel for the applicant as well as Sri Rajesh Kumar Singh, learned A.G.A. and perused the record.
2. This is the second bail application. First bail application got rejected by this Court vide order dated 9.5.2022 passed in Criminal Misc. Bail Application No.530 of 2020.
3. The present application under Section 439 Cr.P.C. has been filed seeking bail in Case Crime No.520 of 2018, S..T. No.39 of 2019, under Sections 302 and 34 IPC, Police Station Gola, District Lakhimpur.
4. As per the allegations in the FIR, on 29.10.2018 at around 5 PM when the deceased, husband of the complainant, was putting Straw on his land, some portion of it, fell on the land of the accused-applicant. The accused-applicant and his bother started quarreling with the deceased and, thereafter, co-accused, Shatrohan caught hold of the deceased and the present accused-applicant assaulted him by Sickle. As a result of the injuries sustained by the deceased, he died on the spot. The prosecution story gets support from the medical evidence inasmuch as following ante-mortem injury was found on the body of the deceased:-

"Incised wound 8 cm x 2 cm x chest deep over Lt. Side upper part of chest 2 cm below Lt. Shoulder underline Lt. Collar bone and let side muscles, left pleura, lungs found cut and 500 ml. Clotted blood present in chest cavity."

5. Cause of death was shock and hemorrhage due to ante-

mortem injuries.

6. After rejection of the first bail application, four prosecution witnesses have been examined. The accused-applicant is nephew of the deceased. Single assault was caused to the deceased by the accused-applicant over some dispute. Accused-applicant has been in jail since 31.10.2018. The trial is yet to get concluded.

7. Learned AGA has opposed the prayer for bail, but not disputed the aforesaid facts.

8. Considering the above facts and circumstances of the case, long incarceration of the accused-applicant pending trial, the applicant is entitled to be released on bail.

9. Let applicant **Tarun** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) No application under Section 311 Cr.P.C. shall be filed by the accused-applicant to recall any witnesses for further examination.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case, the applicant misuses the liberty of bail during trial

and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(v) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

Order Date :- 19.6.2023

Rao/-