

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8142 of 2023

Applicant :- Shiv Charan

Opposite Party :- State Of U.P Thru. Prin. Secy. Addl. Chief Home Civil Sectt. Lko

Counsel for Applicant :- Dinesh Kumar Pushpakar, Amit Chaudhary, Utkarsh, Vikas Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Amit Chaudhary, 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- **Shiv Charan** for grant of bail, in Case Crime No. 400 of 2022, under Sections 147, 148, 149, 504, 506, 342, 323 and 302 I.P.C., Police Station Raniganj, District Pratapgarh, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. In the first information report lodged by the wife of the deceased, general role of assault with 'kulhari'/axe, lathi-danda and iron-rod has been assigned to all the accused persons named in the F.I.R., however, no specific role or any overt act has been assigned to the applicant.

4. It is further submitted that in the postmortem report, the deceased is shown to have sustained three injuries, out of these, two injuries are shown to be fatal, as the same have been found on the 'right parietal and occipital and parietal region'. Thus, at this stage it could not be ascertained with certainty as to who from amongst the five named accused persons was the author of the fatal injuries.

5. It is further submitted that nephew of the deceased, namely, Mahendra Pratap Yadav also shown to be an eye witness, however, his presence at the spot is doubted on the score that the deceased was admitted in hospital by one Ram Jatan and, thus, had the nephew of the deceased namely Mahendra Yadav would have been on the spot, the deceased might have been admitted by him.

6. It is next submitted that identically placed co-accused person, namely, Anubhav @ Anubhav Viswakarma has been granted bail by a co-ordinate Bench of this Court, vide order dated 22.11.2023 passed in Criminal Misc. Bail Application No. 3705 of 2023 and the role of the instant applicant is similar to him, as the only difference is the recovery of an 'iron-rod' from the applicant, however, the same is not significant in view of the fact that no differentiation may be made in the nature of two fatal injuries sustained by the deceased.

7. It is also submitted that applicant is languishing in jail in this case since 26.10.2022 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.

8. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and, therefore, he is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is reflected that deceased had sustained two fatal injuries on his head. Five injuries have been named in the F.I.R. and role of assault has been assigned to all of them with kulhari/axe, iron-rod and lathi-danda. Recovery of an 'iron-rod' has been shown on the pointing of the applicant. One of the accused, namely, Anubhav @ Anubhav Viswakarma to whom general role of assault has been levelled, has been granted bail by a co-ordinate Bench of this Court. Nothing has been brought on record which may suggest that the facility of bail granted by a co-ordinate Bench of this Court, has been challenged at any higher forum or has been cancelled by the same Bench. Applicant is languishing in jail in this case since 26.10.2022 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

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- **Shiv Charan** involved in above-mentioned case, be released on bail on his 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.

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 :- 12.12.2023

Praveen