

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9149 of 2022

Applicant :- Pradeep Kumar Yadav S/O Late Heeralal Yadav

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

Counsel for Applicant :- Rajendra Prasad Yadav, Mahmood Alam

Counsel for Opposite Party :- G.A., Pradeep Kumar Shukla

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Mahmood Alam, learned counsel for the accused/applicant, Shri Pradeep Kumar Shukla, learned counsel for the complainant/ informant as well as learned AGA for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Pradeep Kumar Yadav** for grant of bail, in Case Crime No. 274/2021, under Section 302 IPC, Police Station Dhanepur, District Gonda, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The First Information Report has been lodged by the son of the deceased (Heeralal Yadav) on 2.11.2021 at Police Station Dhanepur, District Gonda alleging therein that on the basis of enmity with regard to the partition of immovable properties, on 1.11.2021 at about 7.00 P.M. the accused persons named in the FIR started assaulting the father of the informant and information of this incident was given to him by his mother on phone. It is also alleged that the dead body of the deceased could only be found in the field of one Dashrath. The postmortem on the body of the deceased was conducted on 2.11.2021 wherein multiple lacerated wounds in an area of 20 c.m.x 12 c.m. over left side of occipital region of the head of the deceased were found beneath which the bones were also found fractured and brain was also found lacerated, apart from this, one lacerated wound was found on mandible region and cause of death has been ascertained due to hemorrhagic shock on the basis of ante-mortem injuries.

4. Highlighting the above fact, it is submitted that the first informant is not an eye witness of the incident and the incident is told to him by his mother Laldei . The statement of one

Lalita Devi is important who claims to have seen the occurrence and she has assigned the role of assault with a sabbal to co-accused Ramsuresh Yadav on whose pointing a sabbal has also been shown to have recovered while no incriminating article / weapon has been recovered from the applicant or on his pointing.

5. It is further submitted that the prosecution story, so far as the implication of the applicant is concerned, appears to be doubtful as, had the incident occurred in the manner stated by the witness Lal Dei, the body of the deceased was not required to be searched and it appears that the deceased has not been done to death in presence of his wife and the implication of the applicant is only on the basis of suspicion.

6. It is further submitted that the applicant is in jail in this case since 15.12.2021 and he is not having any criminal antecedent and only two prosecution witness has been testified so far.

7. Learned AGA on the other hand submits that there are two prosecution witnesses who have claimed to have seen the incident, one is Laldei who is wife of the deceased and another is Radhey Yadav and both these eye witnesses have assigned the role of assault to the applicant also, therefore, having regard to the role alleged against the applicant, he is not entitled to be released on bail.

8. Shri Pradeep Kumar Shukla, learned counsel appearing for complainant vehemently opposes the prayer of bail of the applicant on the ground that on the basis of partition of immovable properties the applicant and other co-accused persons were annoyed from his father (deceased) for not executing sale deed of property in their favour and they assaulted their father brutally with Sabbal, Saria, Lathi and spade (Faoda) and having regard to the injuries sustained by the deceased the applicant 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 the First Information Report of this case has been lodged by another son of the deceased, namely, Pawan Kumar Yadav who at that point of time was employed at Gonda and information was given to him by his mother Lal Dei. Lal Dei has claimed to have seen the occurrence and has assigned specific role of assault to all the accused persons, with rod (sariya), Lathi, Sabbal and spade (Faoda). It is also stated by her that the deceased was dragged away and she in order to save herself had hidden somewhere and later on when a search was launched the dead body of the deceased could only be found in the field of one Dashrath.

There is another witness Lalita Devi who has alleged the role of assault to co-accused Ram Suresh on whose pointing Sabbal has also been recovered. The State in its counter affidavit has enclosed the statement of one Radhey Yadav who has also claimed to be the eye witness of the incident and he had categorically assigned the role of the assault to the instant applicant. Two witnesses, namely, informant as well as Lal Dei has been recorded by the trial court and has reiterated the role of the applicant and another co-accused persons pertaining to the assault given by them to the deceased. It is also brought in the knowledge of this Court that charge sheet has only been filed against applicant and co-accused Ram Suresh Yadav and after moving an application under Sections 319 Cr.P.C. three remaining accused persons were summoned by the trial court and that summoning order was challenged before this Court under Section 482 Cr.P.C. which was rejected and an S.L.P. against the same was also preferred before the Apex Court which has also been rejected.

10. The motive was certainly available to the instant applicant and there are two eye witnesses Radhey and wife of the deceased who have assigned the specific role of assault to co-accused and multiple lacerated wounds in an area of 20 c.m.x 12 c.m. over left side of occipital region of the head of the deceased were found beneath which the bones were also found fractured and brain was found lacerated, which prima facie suggests that the wound has been caused by giving multiple blows. The applicant/accused is son of the deceased. Thus, in view of all the facts and circumstances of the case, I do not find any good ground to release the applicant on bail and therefore the application for bail moved by the applicant is hereby ***rejected.***

11. The trial court is, however, directed to conclude the trial with utmost expedition by fixing very short dates, if there is no legal impediment.

Order Date :- 2.11.2023

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