

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9045 of 2023

Applicant :- Arbaaz @ Aalmin

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

Counsel for Applicant :- Santosh Kumar Srivastava

Counsel for Opposite Party :- G.A.,Arun Pratap Verma,Mulayam Singh Yadav

Hon'ble Mohd. Faiz Alam Khan,J.

This is second bail application moved on behalf of the applicant as his first bail application has been dismissed as not pressed by this Court and the same has not been adjudicated on merits.

Heard Shri Santosh Kumar Srivastava, learned counsel for the accused-applicant as well as learned A.G.A. for the State as well as Shri Mulayam Singh Yadav, learned counsel appearing for the informant/complainant and perused the record.

This bail application has been moved by the accused/applicant- **Arbaaz @ Aalmin** for grant of bail, in Case Crime No.192 of 2020 under Sections 304,506 I.P.C., Police Station-Sammanpur, District- Ambedkar Nagar, during trial.

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 which has been lodged by the wife of the deceased on 30.06.2020 at Police Station- Sammanpur, Ambedkar Nagar on the exhortation given by co-accused Aijaj. The role of assaulting the deceased has been assigned to the instant applicant and co-accused Shahnawaj with specific role of assault attributed to the applicant with the *fawda* (spade).

Highlighting the above facts, it is submitted on behalf of the applicant that the F.I.R. of the instant case has been lodged on 30.06.2020 while the incident had occurred on 22.05.2020 and the explanation which has been given for occurring inordinate delay in reporting the matter to the police has not been sufficiently explained.

It is further submitted that during the lifetime of the deceased, his injuries were never examined and after his death, when the post-mortem was conducted, only a wound, which may relate to the surgical process, has been found and thus, it appears to be a case of single blow belying the story of the prosecution that

applicant has assaulted the deceased multiple times as multiple injuries have not been found on the person of the deceased.

It is next submitted that cause of death of the deceased has been ascertained as infective shock due to brain surgery which suggests that the death of the deceased may not be related with the injury and in fact, the same was the result of an infection which may occurred due to the careless handling of the patient after surgery.

It is vehemently submitted that even if the case of the prosecution is believed as it is, it is a case of single blow. The applicant has not acted brutally and has not taken advantage of the alleged vulnerable condition of the deceased and he is in jail in this case for the last three years (14.09.2020) and till now, only a single prosecution witness has been produced before the trial Court. Thus, the trial is not going to conclude in near future.

It is also submitted that there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty and he has also not having any criminal antecedent and he will cooperate in the trial.

Learned A.G.A., on the other hand, opposes the prayer of bail of the applicant on the ground that the applicant is accused of committing an heinous offence.

Shri Mulayam Singh Yadav, learned counsel appearing for the informant/complainant vehemently opposes the prayer of the bail of the applicant on the ground that his first bail application has already been dismissed and the manner in which the assault has been given by the applicant to the deceased would itself render the applicant from getting the facility of bail.

Having heard learned counsel for the parties and having perused the record, it is reflected that the first bail application of the applicant has been dismissed as not pressed and therefore, the adjudication of the plea of bail of the applicant was not on merit. The F.I.R. of the instant case has been lodged with considerable delay. The injuries sustained by the deceased were not examined during his lifetime for the reason best known to the prosecution. However, in the postmortem report, one surgical wound and another a scar on the right side of parietal region of skull has been found. One of this injury may only be related with the surgical procedure. Thus, there appears substance in the submissions made by learned counsel for the applicant that it is a case of single blow and the applicant, even if the case of the prosecution is believed as it is, has not acted

brutally. Only one witness has been produced before the trial Court and the applicant is in jail in this case for the last three years. It is to be recalled that the process of adjudication may itself be not permitted to act as punishment as the same could only be inflicted after holding a person guilty especially when he is also having presumption to commit the same offence again.

Thus, having regard to all the facts and circumstances of the case and keeping in view, the additional fact that applicant is not having any criminal history and is detained in prison for the last three years and only one prosecution witness has been testified, the facility of bail, in the considered opinion of this Court may be granted.. The presence of the applicant could be secured before the trial court by placing adequate conditions.

With the aforesaid observations/directions, the second bail application is **allowed**.

Let the accused/applicant- **Arbaaz @ Aalmin** 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.

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

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

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 of this Court on the merits of the case.

Order Date :- 10.10.2023
Gurpreet Singh