

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9221 of 2023

Applicant :- Gyan Prakash

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

Counsel for Applicant :- Badrus Sahar, Manoj Kumar Dixit

Counsel for Opposite Party :- G.A., Pranjal Krishna

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Manoj Kumar Dixit, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Pranjal Krishna, learned counsel for the informant/complainant and perused the record.

2. This bail application has been moved by the accused/applicant- **Gyan Prakash** for grant of bail, in Case Crime No.60 of 2022 under Sections 147/148/504/307/406/302/323/506 I.P.C. and Section 7 of Criminal Law Amendment Act, Police Station Dubagga, District Lucknow, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that in the F.I.R. lodged by the informant/injured Jaiki Singh, the role of assault with lathi-danda and iron rod has been assigned to the instant applicant and four other accused persons namely Shrawan Sharma, Jai Prakash, Ravi and Kamla Devi and specific role of carrying an iron rod has been assigned to the instant applicant.

5. It is vehemently submitted on behalf of the applicant that no overt act or specific role of assault on any particular part of the deceased or on any other injured person has been assigned to the instant applicant and the role is of general in nature akin to the role of accused persons Kamla Devi, Shrawan Sharma and Chandra Prakash and all these three accused persons namely Chandra Prakash, Kamla Devi and Shrawan Sharma have been granted bail by Coordinate Benches of this Court vide orders dated 07.07.2023, 16.03.2023 and 20.04.2023 passed in Criminal Misc. Bail Application Nos.8444 of 2023, 10960 of 2022 and 14178 of 2022, respectively.

6. It is vehemently submitted that the deceased had sustained as much as eight injuries, out of which seven injuries are of the nature of incised wound and role of assaulting with saw/aari (sharp-edged weapon) has been assigned to co-accused Ravi and the Coordinate Benches of this Court taking into consideration the same have extended the facility of bail to other similarly placed co-accused persons.

7. It is further submitted that four injured persons namely Jaiki Singh, Manoj Singh, Pawan Bajpai and Mehak Tiwari have been sustained simple injuries and in absence of any specific averment against the applicant, the same may not be attributed to the applicant and nature of these wounds would also project that same may only be caused by use of lathi-danda.

8. It is also submitted that the role of assault with iron rod has been assigned to two accused persons namely applicant Gyan Prakash and co-accused Jai Prakash and recovery of iron rod has only been shown from co-accused Jai Prakash and thus in real sense no recovery has been made either from the possession or on the pointing of the applicant, which belies prosecution story.

9. It is vehemently submitted that even if the case of the prosecution is taken on its face, it would emerge that the incident had not occurred in execution of pre-arranged plan and the same had occurred in a spur of moment without there being any premeditation and thus there is no common intention in causing the death of the deceased.

10. It is next submitted that applicant is in jail in this case since 13.12.2022 and though criminal history of two cases is shown against the applicant pertaining to the offence under Section 376 I.P.C. and 3/4 of the U.P. Control of Goondas Act, however, the case with regard to the U.P. Control of Goondas Act has become infructuous by efflux of time and in another case with regard to Section 376 I.P.C., the applicant has been acquitted by the trial court and the copy of the said judgement has been placed on record through supplementary affidavit dated 5/7.8.2023. Charge-sheet in this case has already been submitted and 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.

11. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that apart from causing death of the deceased, four other persons have injured in the incident and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not

controvert the other factual submissions made by learned counsel for the applicant.

12. Shri Pranjal Krishna, learned counsel for the informant/complainant has drawn attention of this Court towards the injuries sustained by the injured persons as well as by the deceased in order to show that brutal assault has been given by the applicant and other accused persons. It is also highlighted that in the bail order pertaining to the co-accused Shrawan Sharma, having regard to the one fatal injury on the head of the deceased, the role of co-accused Shrawan Sharma has been distinguished from the role of instant applicant and the bail orders with regard to co-accused Shrawan Sharma and Kamla Devi have been challenged before the Supreme Court, thus applicant is not entitled to be released on bail.

13. Having heard learned counsel for the parties and having perused the record, it is evident that on account of a dispute pertaining to sale and purchase of a land, the deceased had gone to the house of accused persons to demand Rs.8 lakh, which were due on them and an altercation appears to have occurred resulting in fight. The role of carrying iron rod has been assigned to the instant applicant and Jai Prakash @ Narain and the role of assault with lathi-danda has been assigned to Kamla Devi, Shrawan Sharma and Chandra Prakash while the role of assaulting with saw/aari (sharp-edged weapon) has been assigned to co-accused Ravi. The other accused persons namely Kamla Devi, Shrawan Sharma and Chandra Prakash, to whom the role of assaulting with lathi-danda has been assigned, have been granted bail by Coordinate Benches of this Court. The deceased had sustained many incised wounds and fatal incised wound has been found on his head, which, as per prosecution case, could only be attributed to the co-accused Ravi. The fight appears to have occurred all of sudden in a spur of moment, it is in this background vehemently submitted on behalf of the applicant that it is a case, where there was no time for the accused persons to have formed common intention and every accused person is responsible of his own act. Identically placed accused persons namely Chandra Prakash, Kamla Devi and Shrawan Sharma have been granted bail by Coordinate Benches of this Court and the bail orders pertaining to them have still not been cancelled. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 13.12.2022 and criminal history of two cases has been adequately explained. In the considered opinion of this Court, facility of bail may also be extended to the applicant on the principle of parity as well as on merits. The presence of the applicant could be secured before the trial court by placing adequate conditions.

14. Having regard to the overall facts and circumstances of the case and 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**.

15. Let the accused/applicant- **Gyan Prakash** 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.

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

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

18. 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 :- 20.11.2023

Anupam S/-