

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10716 of 2023

Applicant :- Shabnam

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

Counsel for Applicant :- Nisha Srivastava

Counsel for Opposite Party :- G.A., Ghulam Mohammad Kamil

Hon'ble Brij Raj Singh, J.

1. Heard Ms. Nisha Srivastava, learned counsel for the applicant Sri G.M. Kamil, learned counsel for the complainant and Sri Diwakar Singh, learned A.G.A. for the State.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.142 of 2023 under sections 323, 304, 504 and 506 IPC, Police station Hardi, District Bahraich.

3. It has been submitted by learned counsel for the applicant that wife of deceased lodged FIR on 23.03.2023 making allegation that the applicant and three others (total four) caused injuries upon her husband because altercation took place between the children of both parties. It has been submitted that in the statement of the complainant recorded under section 161 Cr. P.C. the date of incident is mentioned as 08.03.2023 and as per FIR, date of incident is mentioned as 21.03.2023. She has submitted that there is change version in between FIR and the statement of the complainant recorded under section 161 Cr.P.C. It has been submitted by learned counsel for the applicant that the deceased received one head injury and cause of death is said injury. Learned counsel for the applicant has submitted that in the statement of witnesses, namely, Tayyaba and Salma, it has come on record that applicant and co-accused Farukh had assaulted the deceased with Lathi. Learned counsel for the applicant has submitted that applicant had got three children and out of three one of infant child is in jail alongwith her. Learned counsel for the applicant has requested for benefit of section 437 Cr.P.C. and the case of the applicant is distinguishable with the co-

accused Farrukh. She has further submitted that deceased received one single injury on his head but the same has not been specified as to who caused the said injury. The applicant has no previous criminal history and there is no possibility of fleeing away from the judicial process or tempering with the witnesses and in case, the applicant is enlarged on bail, she shall not misuse the liberty of bail. The applicant is in jail since 22.05.2023.

4. On the other hand, Sri G.M. Kamil, learned counsel for the complainant has opposed the prayer for bail and has submitted that in the statement of witnesses, namely, Tayyaba and Salma, the name of the applicant has come into light that she has assaulted the deceased as such she is not entitled for bail. Sri Diwakar Singh, learned A.G.A. has opposed the prayer for bail application

5. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that deceased received single fetal injury on the head but the same has not been specified to the applicant and the argument that the applicant is a lady and she is in jail alongwith her infant child as such the case of the applicant is distinguishable, therefore, I am of the opinion that the applicant is entitled to be released on bail .

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

(i) The applicant shall file an undertaking to the effect that she 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.

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

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure her 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 her, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) 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 her in accordance with law.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 28.10.2023

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