

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10711 of 2023

Applicant :- Sanjay Kumar Yadav

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

Counsel for Applicant :- Dr. Pooja Singh, Surya Prakash Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Ms. Dr. Pooja Singh, 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- **Sanjay Kumar Yadav** for grant of bail, in Case Crime No. 514 of 2022, under Sections 304, 201, 175 I.P.C. and Section 15(3) Medical Council Act, Police Station Kotwali Rudauli, District Faizabad/Ayodhya, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and the complicity of the applicant has been shown in this case only on account of the fact that he is the owner/manager of Swati Medical Centre. However, he is not authorized to treat any patient nor he has ever treated any patient and his job is confined only with regard to the general maintenance of the hospital.

4. It is further submitted that first information report of this case has been lodged on the basis of a complaint made by A.C.M.O., Ayodhya after inquiring the matter on the complaint made by one Nirmal Kumar (husband of the deceased) and it is alleged therein (F.I.R./enquiry report) that in the inquiry conducted by the informant as well as Additional Chief Medical Officer pertaining to the allegations that on 11.07.2022 the wife of the above-mentioned Nirmal Kumar was admitted in Swati Medical Centre, Rudauli, Ayodhya and Rs. 50,000/- were deposited and the surgical operation was conducted by Dr. Akhlesh Mishra, whereby twin children were born. However, despite noticing anemic condition of the deceased the blood was not given to her and, thus, on account of sheer negligence of Dr. Akhlesh Mishra, his (Nirmal Kumar) wife died on 20.07.2022. It is also

stated in the inquiry report/F.I.R. that during inquiry the statement of Nirmal Kumar was recorded, wherein he fortified the allegations of complaint and also the statement of the owner of the hospital (applicant) was recorded and it is revealed that surgical operation was conducted by Dr. Akhilesh Mishra and Dr. Sunil Chaudhari was looking after the deceased (patient). It is also highlighted in the inquiry report/F.I.R. that Dr. Akhilesh Mishra is a B.U.M.S and is not authorized to perform surgery and this has been authenticated by the Registrar, Ayurvedic and Unani Tibbi, Medical Counsel Board, U.P. and, thus, Dr. Akhilesh Mishra is prima facie responsible.

5. Highlighting the above facts, it is vehemently submitted that first information report of this case has been lodged on the basis of the report of a committee constituted by the Chief Medical Officer, Ayodhya and after thorough inquiry Dr. Akhilesh Mishra, who had conducted the surgery on the deceased was found prima facie responsible. However, the name of the applicant was including therein on the basis that he is the owner of the hospital. However, no specific allegations of conducting any surgical procedure on the deceased was levelled against him.

6. It is further submitted that the above-mentioned Nirmal Kumar (husband of the deceased) has also instituted a complaint before the Consumer Forum, Ayodhya and by filing a compromise the said complaint was dismissed as the same was not pressed by Nirmal Kumar on account of arriving at a settlement with Dr. Akhilesh Mishra and, thereafter, the allegations have been levelled by Nirmal Kumar in her additional statement recorded in February, 2023 only against the applicant.

7. It is vehemently submitted that the applicant has been made a 'scapegoat' only to shield Dr. Akhilesh Mishra and despite all the allegations were primarily against Dr. Akhilesh Mishra and the same has been highlighted by the Additional Chief Medical Officer, Ayodhya, on the basis of inquiry report. the F.I.R. has been lodged but Dr. Akhilesh Mishra has been given the clean-chit while the applicant, who at the most may be held vicariously liable has been charge-sheeted without there being any evidence.

8. It is further submitted that applicant is a responsible citizen of the locality and allegations against him have been developed afterwards when the complainant, namely, Nirmal Kumar and Dr. Akhilesh Mishra had arrived at a settlement and thereafter the investigating officer has targeted the applicant without there being any evidence. The cause of death of the deceased could

not be ascertained in the postmortem report and admittedly the applicant was not involved in any surgical procedure, which was conducted on the deceased by Dr. Akhilesh Mishra and later on whatever allegations have been levelled against the applicant by the complainant Nirmal Kumar and his family members are the outcome of the settlement arrived at between him and Dr. Akhilesh Mishra.

9. It is next submitted that applicant is languishing in jail in this case since 23.06.2023 and he is not having any criminal history. Charge sheet in this case has already been filed 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.

10. 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.

11. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted case that the complaint, which was initially made by complainant Nirmal Kumar (husband of the deceased) was inquired by a committee constituted by Chief Medical Officer, Ayodhya and after making thorough inquiry the committee was of the opinion that Dr. Akhilesh Mishra who is a B.U.M.S. degree holder was not authorized to perform any surgery. However, the complicity of the applicant was only found on account of he being the manager/owner of the hospital. In the inquiry report, on the basis of which the first information report has been lodged, the committee which has inquired the allegations was *prima facie* appears to be of the view that the negligence has been committed by Dr. Akhilesh Mishra (B.U.M.S./Unani Surgeon), who was not at all authorized to perform surgery and in the F.I.R. though, the applicant is named but apart from the allegations that Rs. 50,000/- were taken by him, no other allegations have been levelled. It is vehemently submitted on behalf of the applicant that the real culprit Dr. Akhilesh Mishra has been exonerated by the investigating officer probably on the ground that he had settled the dispute with the complainant Nirmal Kumar and compromise pertaining to which was also filed before the Consumer Forum, Ayodhya and therefore, the complainant Nirmal Kumar started targeting the applicant. It has also been submitted that even if the case of the prosecution is taken on its face, the allegations with regard to the performance of any surgical procedure has not been levelled against the applicant.

12. Thus, having regard to the fact that in the first information

report, which has been lodged on the basis of inquiry conducted by the committee constituted by the Chief Medical Officer, Ayodhya and the role assigned in that inquiry report/F.I.R. to the applicant, in the considered opinion of this Court, the facility of bail may safely be extended to the applicant. Applicant is languishing in jail in this case since 23.06.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

13. 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**.

14. Let the accused/applicant- **Sanjay Kumar Yadav** 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.

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

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

17. 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 :- 16.10.2023

Praveen