

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10674 of 2023

Applicant :- Pradeep Yadav

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

Counsel for Applicant :- Shobh Nath Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Shobh Nath Pandey, learned counsel for the accused/applicant as well as learned A.G.A for the State and perused the record.
2. This second bail application has been moved on behalf of applicant – **Pradeep Yadav** for grant of bail, in Case Crime No. 293/2021, under Sections 147, 148, 302, 308, 323, 325, 452, 504, 506 and 34 IPC, Police Station Tarun, District Ayodhya, during trial, as his first bail application has been rejected by a Coordinate Bench of this Court, vide order dated 4.11.2022 passed in Crl. Misc. Bail Application No. 5990 of 2022.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. General role of assault with 'Lathi, Danda, Faoda, Tengari and Kudal' has been levelled against all the accused persons named in the FIR, however, the role of assault on the head of the deceased with 'Lathi' has been assigned to one Ram Sukh.
4. Elaborating further, it is submitted that informant of the case does not appear the eye witness of the incident and all the eye witnesses including the injured witness have not assigned any specific role to the applicant.
5. It is further submitted that since the rejection of the first bail application of the applicant on 4.11.2022 till now only one prosecution witness is being testified and there is no hope that the trial may conclude in near future.
6. It is further submitted that no weapon of assault has either been recovered from the possession or pointing of the applicant. He is not having any criminal antecedent and is detained in prison since 13.12.2021.

7. Learned AGA on the other hand submits that first bail application of the applicant has already been rejected and while rejecting the first bail application of the applicant a Coordinate Bench of this Court has directed that the applicant may renew his prayer of bail after all the witnesses of the fact are examined and admittedly all the witnesses of the fact have not been examined, thus application is premature and is liable to be rejected.

8. Having heard learned counsel for the parties and having perused the record, it is reflected that in the First Information Report lodged by Shiv Ram, general role of assault with 'Lathi, Danda, Faoda, Tengari and Kudal' has been assigned to all the accused persons named in the FIR, however, specific role of assault with 'Lathi- Danda' on the head of the deceased was assigned to the instant applicant and co-accused Ram Sukh. The postmortem report of the deceased would reveal that the deceased has sustained grievous injuries on his head. Thus, prima facie the allegations of the FIR are supported by the medical evidence. Various submissions have been raised by learned counsel for the applicant in order to show that similarly placed co-accused persons have been granted bail by the Coordinate Benches of this Court, however, it appears to be an admitted situation that co-accused Ram Sukh to whom the role of assault has been assigned has not been granted bail yet. The statement of one prosecution witness, namely, informant- Shiv Ram is being recorded before the trial court and he in his examination recorded so far as stated that the applicant and co-accused Ram Sukh have assaulted his father Raghunath on his head with 'Lathi-Danda' The Coordinate Bench while rejecting the first bail application of the applicant has given the direction to the trial court in paragraph 5 of the said order, which is reproduced as under:-

"5. Trial court is directed to proceed with the trial expeditiously and record evidence of witnesses of fact expeditiously preferably within a period of 6 months from the date a certified copy of this order is produced before it. After witnesses of fact are examined, the accused-applicant may revive plea for bail."

9. A copy of that order was also directed to be placed before the trial court, the trial court in its report dated 27.9.2023 has informed that the order dated 4.11.2022 whereby the first bail application of the applicant was rejected and simultaneously a direction was given to record the statement of the witnesses of the fact within the period stipulated has not been brought on record. Admittedly only one prosecution witness has been examined and there are other prosecution witnesses including injured once.

10. Thus, for the reasons mentioned herein before, I do not find any change in the circumstances since rejection of first bail application of the applicant, the second bail application prima facie appears to be premature and is liable to be rejected and is ***rejected*** accordingly.

11. The trial court is, however, directed to record the statement of all the witnesses of fact, which the prosecution is willing to produce, within the period of six months from the date of production of an authenticated copy of this order before the trial court. The accused/ applicant shall place the copy of this order before the trial court, immediately.

12. The applicant may renew his prayer of bail before this Court after six months from production a copy of this order before the trial court, even if all the witnesses of the fact are not examined till then.

Order Date :- 28.10.2023

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