

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10828 of 2023

Applicant :- Ramnath

Opposite Party :- State Of U.P. Thru. Its Prin. Secy. Deptt. Of Home, Civil Secrtt. Lko.

Counsel for Applicant :- Bhoopal Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Bhoopal Singh, learned counsel for the applicant, Shri G.D. Bhatt, learned AGA-I for the State and perused the record.
2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.73 of 2022, under Section 304 I.P.C., Police Station Sujauli, District Bahraich.
3. It is submitted by learned counsel for the applicant that as per FIR, it appears that the incident took place on 18.06.2022 and husband of the deceased lodged FIR on 20.06.2022. According to FIR, the complainant's wife Angoori Devi and Rupa Devi, relative of complainant had gone to Mihirpurwa for medical treatment. On returning back, Rupa came to house by bus and the applicant had given lift to the deceased on his motor cycle and at 7 o'clock, the applicant had given the mobile of the deceased to his brother-in-law. The FIR further indicates that on 19.06.2022 in the morning the deceased was found in injured state under a Semal tree in between the way of Sirsiyanpurwa to Vishuntada. Thereafter. the deceased was taken to the hospital where she died.
4. Learned counsel for the applicant submitted that admittedly, as per FIR, deceased did not return to the home on 18.06.2022 and no report was lodged rather the deceased was found in the injured condition at 400 mts away from the house of complainant. Learned counsel further submitted that there is no eye witness of the incident. It appears that applicant had taken the deceased on his motorcycle and he had drop her to her home, for this reason, the complainant and his family members were annoyed and they might have beaten the deceased due to which she received injuries and in injured state, she was left at the place, where she was found. The applicant has no criminal history. The applicant is languishing in jail since 20.06.2022.
5. Learned counsel submitted that there is delay of two days in lodging the FIR, which makes the prosecution case doubtful on the face of FIR itself. He submitted that there is no direct or clinching evidence found against the applicant

and on the basis of FIR which too is not supported by any cogent evidence, applicant has been made accused. It has been submitted that house of applicant is 3 kms. away from the place of occurrence whereas the deceased was found in injured state at place which is just 400 mts. away from house of complainant.

6. Learned AGA has filed supplementary counter affidavit on 18.11.2023 and in para 6, it is admitted that the house of the deceased, which is the house of the complainant is just 400 mts away from the place of incident.

7. Learned AGA has opposed the prayer for bail and has submitted that the FIR indicates that the deceased was taken on motorcycle by the applicant and the circumstances shows that he was involved in commission of crime, as such bail of the applicant is liable to be rejected.

8. Considering the over all facts and circumstances of the case, after hearing learned counsel for the parties and looking to the argument that place of incident is just 400 mts away from the house of the complainant; argument that house of the applicant is more than 3 kms away; argument that no direct or clinching evidence is found against the applicant ; argument that there is no independent eye witness ; argument of delay in lodging the FIR which caste doubt over the prosecution case, therefore, in my considered opinion, I find it to be a fit case for bail.

9. Let the applicant, **Ramnath**, be released on bail in the above case crime number on his 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 he 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 his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him 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 his 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 him, 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 him in accordance with law.

10. 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 :- 21.11.2023

Pks