

**Court No. - 32**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 11063 of 2023

**Applicant :-** Sanjeev Kumar Gupta

**Opposite Party :-** State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home Civil Sectt. Lko.

**Counsel for Applicant :-** Deepak Kumar, Onkar Pandey

**Counsel for Opposite Party :-** G.A.

**Hon'ble Narendra Kumar Johari, J.**

Counter affidavit filed today by the learned A.G.A. is taken on record.

Heard Sri Bindeshwari, appearing for the applicant, learned A.G.A. for the State and perused the record.

The present second bail application has been filed by the applicant in Case Crime No. 0155 of 2023, under Sections 304, 504 I.P.C., Police Station - Kotwali Bikapur, District - Ayodhya. The first bail application of the applicant has only been rejected as not pressed by this Court vide order dated 30.6.2023 passed in Criminal Misc. Bail Application No. 8155 of 2023.

According to the F.I.R. of the present case, learned counsel for the applicant submitted that on the date of the occurrence the toilet of Shabhajeet Gupta (brother of the informant) was under construction. He had collected the bricks for the above construction but some of the bricks were stolen by unknown persons. The younger brother of the informant was making a noise regarding the theft of bricks and alleging the persons for the same. At that time the co-accused person- Jagdish Gupta reached on spot and some scuffle took place between Shabhajeet Gupta and Jagdish. Consequently, the other co-accused persons- Raj Kumar Gupta and Pintu Gupta along with the present applicant reached on sport carrying with 'lathi' and 'danda' as well as bricks in their hands. Apprehending the occurrence of fight the father of informant- Ram Milan Gupta also reached on spot and tried to settle the dispute by interfering between them thereafter the co-accused- Jagdish, Raj Kumar Gupta, Pintu Gupta and applicant started beating the father of the informant. The father of informant received injuries of 'lathi' on head and was brought to Community Health Centre for treatment and referred to District Hospital, Ayodhya. Again he was referred from Ayodhya to Medical College, Lucknow but

he succumbed by the injuries received on his head.

According to the postmortem report the deceased has received two fatal injuries on his head. Consequently, his parietal and temporal bone was found fractured.

Learned counsel for the applicant submitted that the applicant is innocent and he has wrongly been implicated in this case. Four persons have been named in F.I.R. for assaulting the deceased. Out of whom two persons Pintu Gupta and applicant have been named to attack the deceased by lathi. The witness in his statement stated that the applicant has given single blow of lathi on the head of the deceased. On the other hand, the deceased has received two fatal injuries. The co-accused-Pintu Gupta, who has been alleged to attack on deceased by lathi on head has been granted bail vide order dated 30.6.2023 passed in Criminal Misc. Bail Application No. 8155 of 2023. A general allegation has been made in the F.I.R. as well as in the statement of the witnesses regarding attack on deceased. The applicant has no criminal history. Nothing incriminating article has been recovered from the physical possession of the applicant. There was no previous enmity between the applicant and the informant. The deceased has received injuries in sudden scuffle. At the time of the incident the age of the deceased was 65 years. Applicant is in jail since 11.4.2023. As the co-accused- Pintu Gupta, who has been assigned similarly role has been granted bail, therefore, the present applicant is also entitled to be enlarged on bail on the ground of parity. If he is released on bail, he will not misuse the liberty of bail and will co-operate in the trial.

Learned A.G.A. has opposed the prayer for grant of bail and submitted that the witnesses- Safiyanisha, Ajay Kumar Gupta and Sabhajeet has stated that both the applicant and Pintu Gupta were carrying lathi in their hands and started attack on head of the deceased although he did not dispute the other factual contentions argued by learned counsel for the applicant.

Considering the submissions of learned counsel for the parties, facts and circumstances of the case, nature of supporting evidence, reasonable apprehension of tampering the witnesses, parity and, prima facie satisfaction of the court in support of the charges, without expressing any opinion on the merit of the case, the applicant is entitled to be released on bail.

Let applicant (**Sanjeev Kumar Gupta**) involved in Case Crime No. 0155 of 2023, under Sections 304, 504 I.P.C., Police Station - Kotwali Bikapur, District - Ayodhya be released on bail, subject to the following conditions :-

(i). The applicant will furnish a personal bond with two sureties of the like amount to the satisfaction of the court concerned.

(ii). The applicant will appear and strictly comply following terms of bond executed under section 437 sub section 3 of Chapter 33 of Cr.P.C.-

(a) applicant shall attend in accordance with the conditions of the bond executed under this Chapter.

(b) applicant will not indulge in any criminal activities, and

(c) applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(iii). The applicant shall cooperate with investigation /trial.

(iv). 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.

(v). The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(vi). In case, the applicant misuses the liberty of bail during trial 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.

(vii). The applicant shall remain present, 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.

**Order Date :- 31.10.2023**

Anuj Singh