

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11019 of 2023

Applicant :- Rakesh Kumar

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

Counsel for Applicant :- Dinesh Kr. Chaudhary

Counsel for Opposite Party :- G.A.,Jalaj Kumar Gupta

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed by learned counsel for the complainant/informant is taken on record. Rejoinder affidavit to the counter affidavit filed by the State is also taken on record.
2. Heard Shri Dinesh Kr. Chaudhary, learned counsel for the accused-applicant, Shri Jalaj Kumar Gupta, learned counsel for the complainant/informant as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Rakesh Kumar** for grant of bail, in Case Crime No. 62 of 2023 under Sections 147, 323, 304, 506, 304 and 34 I.P.C., Police Station Gaidas Bujurg, District Balrampur, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case. He was not named in the F.I.R. and the allegations of '*marpeet*' has only been levelled against the named accused persons, namely, Arjun, Ram Ujagar, Paras and Lalta.
5. It is further submitted that after lodging of the first information report, the name of the applicant has surfaced in the statement of the informant recorded under Section 161 Cr.P.C. and the same appears to have been taken on account of enmity as the applicant belongs to the family of the other named accused persons.
6. It is also submitted that general role of assault with '*lathi-danda*' has been assigned to all the accused named in the F.I.R. and in the statement of the prosecution witnesses and no overt act or specific role has been attributed to the instant applicant and, therefore, it could not be presumed at this stage that the

fatal injury on the person of the deceased was caused by the applicant.

7. It is further submitted that two injuries of the nature of contusion and abrasion have been found on the head of the deceased and since the applicant was not named in the F.I.R., which has been lodged promptly, the implication of the applicant appears to be false, as his name has been taken subsequently, the role of the instant applicant is distinguishable and different from the role of other named co-accused persons.

8. It is next submitted that applicant is languishing in jail in this case since 19.05.2023 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.

9. 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.

10. Shri Jalaj Kumar Gupta, learned counsel for the complainant/informant vehemently opposes the prayer of bail of the applicant on the ground that though, the applicant was not named in the F.I.R. but on the same day the statement of the informant was recorded, wherein specific role of assault has been assigned to him. Therefore, having regard to the fact that it is a case where one person has been done to death and four others have sustained grievous injuries, the applicant is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that two injuries of the nature of abrasion and contusions have been found on the person of the deceased and the death of the deceased is shown to have been caused by 'coma', as a result of 'antemortem head injuries'. The other four injured have also sustained injuries. The first information report of this case has been lodged by an injured, namely, Lavkush, who is claiming himself to be injured in the incident. However, the name of the instant applicant is not found in the first information report and subsequently in the statement of the informant recorded under Section 161 Cr.P.C., his name has surfaced as one of the assailants, and in this regard, it is vehemently submitted on behalf of the applicant that involvement of the applicant has been made subsequently on the aid and advice of other persons and he was not involved in the assault. The role of the instant applicant appears to be distinguishable from the role of other co-accused persons who

were named in the F.I.R. Applicant is languishing in jail in this case since 19.05.2023 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.

12. 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**.

13. Let the accused/applicant- **Rakesh Kumar** 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.

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

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

16. 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 :- 26.10.2023

Praveen