

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11042 of 2023

Applicant :- Jamuna

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

Counsel for Applicant :- Atul Verma,Akhilendra Pratap
Singh,Vinod Kumar Yadav

Counsel for Opposite Party :- G.A.,Prem Shankar

Hon'ble Brij Raj Singh,J.

1. Short counter affidavit filed on behalf of the complainant and the rejoinder affidavit filed on behalf of the applicant are taken on record.

2. Heard learned counsel for the applicant and Sri Umesh Chandra holding brief of Sri Prem Shanker, learned counsel for the complainant and Sri Diwakar Singh, learned A.G.A. for the State.

3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.186 of 2023 under sections 147,149,302 IPC Police Station Mohanlalganj, District Lucknow

4. It has been submitted by learned counsel for the applicant that FIR has been lodged by the father of the deceased, naming four persons and the applicant has not been named. The allegation is levelled in the FIR to the extent that four named persons(applicant not named) assaulted the deceased on 13.04.2023 at 8.00 p.m. in the night and thereafter again deceased was assaulted on 14.04.2023 at 3.00 p.m. and the deceased received injury on the head due to which he died. Learned counsel for the applicant has submitted that the statement of the complainant was also recorded under section 161 Cr.P.C. and he has named four persons for making assault against the deceased and the applicant is not named. It has been submitted that on 15.04.2023 an application was moved by the complainant before the concerned police station making allegation that applicant and one Daya Shanker @ Pradeep and the applicant and other four accused persons had assaulted the deceased and requested that their name may also be added . Learned counsel for the applicant has submitted that CD-2 indicates that 'Dharna' was done by the complainant's side and they had blocked the road. On the aforesaid pressure of 'Dharna', the name of the applicant has been added. Learned counsel for the applicant has further submitted that the statement of Shiv Charan, who is brother of the deceased has been recorded under section 161 Cr.P.C. and he has also named three persons, namely, Uma Shanker, Amit and Ganga Vishun and he has also levelled the allegation that they had assaulted the deceased. Similarly, Smt. Kajal wife of Shiv Charan had also given statement under section 161 Cr.P.C. that four persons named in the FIR caused injuries due to which deceased died. Learned counsel for the applicant has

further submitted that the postmortem report indicates that there are two injuries on the head and one injury on scapula and two injuries are fatal but it has not been assigned as to who caused the injury on the head. Learned counsel for the applicant has submitted that the applicant has been falsely implicated only on the pressure created due to block of road and 'Dharna'. It has also been submitted that all the six accused belonging to the same family. It has been submitted that the applicant is in jail since 21.04.2023.

5. On the other hand, Sri Umesh Chandra holding brief of Sri Prem Shanker, learned counsel for the complainant has opposed the prayer for bail and has submitted that the name of the applicant has been added on the application given by the complainant on 15.04.2023 and once the applicant has been named in the case, therefore, offence is made out against him. It has been further submitted that deceased had received three injuries; two on his head and one on scapula and died due to said injury, therefore, the applicant is not entitled for bail. Learned A.G.A. has opposed the prayer for bail.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that applicant was not named in the FIR and his name has been added on 15.04.2023 on the application of the complainant, who has earlier not named in the FIR and under section 161 Cr.P.C. and the argument that deceased received two injuries on the head and there are six accused but the same has not been specified as to who had caused the fetal injuries, therefore, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, namely, **Jamuna**, 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.

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 :- 28.10.2023

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