

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11430 of 2023

Applicant :- Asha Devi

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

Counsel for Applicant :- Smriti

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed by the State and rejoinder affidavit filed on behalf of the applicant are taken on record.
2. Heard Smt. Smriti, learned counsel for the accused-applicant 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- **Asha Devi** for grant of bail, in Case Crime No.254 of 2021, under Sections 323, 325, 304, 504, 506 I.P.C., Police Station Sandi, District Hardoi, 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 and she has not committed any offence as claimed by the prosecution.
5. It is further submitted that the F.I.R. of this case has been lodged by one Khushiram on 17.04.2021 at 00:05 hours at Police Station Sandi, District Hardoi alleging therein that accused persons named in the F.I.R. including the applicant have been implicated on the basis of enmity with regard to drawing water from government hand-pump and alleged to have assaulted the deceased and injured persons with lathi-danda, whereby the deceased Rani as well as injured Khushiram, Hem Singh and Hemrani have sustained grievous injuries and the deceased Rani succumbed to the injuries in the hospital.
6. It is vehemently submitted on behalf of the applicant that general role of assault has been attributed to the applicant and other accused persons named in the F.I.R. by all the prosecution witnesses including injured ones and no overact or specific role has been assigned to the applicant, who is a lady and is not expected to participate actively in the *maarpeet*.

7. It is further submitted that barring one Khushiram, no injured has sustained any grievous injury and the deceased has sustained only one injury of the nature of lacerated wound on the top of her head, which was scalp deep and having regard to the general role assigned to all the accused persons, it may not be ascertained at this stage, as to who from amongst the accused persons was the author of the fatal injury and since the incident had occurred in a spur of moment, the common intention to cause death of the deceased could also not be inferred.

8. It is next submitted that applicant is in jail in this case since 02.05.2023, charge-sheet in this case has already been submitted and the applicant is not carrying any criminal history. There is no apprehension that after being released on bail the applicant 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 having regard to the material/evidence available against the applicant, she is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

10. Having heard learned counsel for the parties and having perused the record, it is evident that the applicant before this Court is a lady. General allegations have been levelled in the F.I.R. as well as in the statement of the prosecution witnesses including injured witnesses Khushiram, Hem Singh and Hemrani with regard to the assault given by the accused persons to them as well as to the deceased Rani, however, no specific or overact has been assigned to the instant applicant. The death of the deceased is shown to have been caused due to comma as a result of ante mortem head injury. In the postmortem report, five stitches have been found on the top of the head of the deceased, however, she was also medically examined when she was alive and a lacerated wound was found on her head, which was scalp deep. The defence of the applicant appears to be that she is a lady and is not expected to participate actively in the *maarpeet* nor so no recovery has been shown from her possession or on her pointing and at this stage, it may not be ascertained as to who from amongst the accused persons was the author of the fatal injury sustained by the deceased. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 02.05.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions. The role of the applicant, who is a lady, appears to be distinguishable from the role of other accused persons.

11. Having regard to the overall facts and circumstances of the case and 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**.

12. Let the accused/applicant- **Asha Devi** involved in above-mentioned case, be released on bail on her 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.

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

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

15. 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 of this Court on the merits of the case.

Order Date :- 1.11.2023

Anupam S/-