

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11607 of 2023

Applicant :- Goli @ Masiullah

Opposite Party :- State Of U.P. Thru. Prin. Secy. (Home), Lucknow

Counsel for Applicant :- Anoop Kumar Upadhyay, Amar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Amar Singh, learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Goli @ Masiullah** for grant of bail, in Case Crime No. 06/2000, under Sections 302, 201 IPC, Police Station Lalia, District Balrampur, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. Initially the FIR of this case has been lodged under Section 304-A IPC and the applicant immediately appeared before the trial court and he was granted bail, however, subsequently without there being any evidence or material, the charge sheet has been submitted by the Investigating Officer under Sections 302 and 201 IPC and the same was challenged before this Court by filing a Writ Petition No. 3720 (M/B) of 2000 and vide order dated 28.1.2000, the interim protection from arrest was provided to the applicant, however, thereafter the said writ petition has been disposed of as has been rendered infructuous and thereafter the applicant did not receive any communication or process from the trial court.

4. Attention of this Court has been drawn towards the order sheet of the trial court enclosed with the Rejoinder Affidavit dated 27.10.2023 in order to show that for the very first time, coercive process against the applicant has been issued on 9.12.2022 and when the applicant could not appear before the trial court, the proceedings under Section 82 Cr.P.C. was also issued, however, the same was challenged before this court by filing an Application under Section 482 Cr.P.C. No. 1679 of 2023, which was disposed of providing liberty to the applicant to appear before the trial court within 30 days, however the

direction of the Coordinate Bench of this Court could not be followed due to some unavoidable reasons. However, the applicant at ultimately surrendered before the trial court on 31.7.2023 and since then he is in jail.

5. It is further submitted that manner in which the incident is shown to have occurred may not even attract section 304 IPC and the same at the most may attract the ingredients of Section 304-A IPC (Death by Rash and Negligent Act) as no intention or knowledge may be attributed to the applicant for causing the death of the deceased.

6. It is further submitted that it has never been the case of the prosecution that the applicant was having any ill will or any intention to eliminate the deceased and the death of the deceased is a result of an accident as he was also a member of the team which had intended to hunt wild animals.

7. It is further submitted that the applicant is now sincerely intending to cooperate with the trial and may present before the trial court as and when his presence would be required and would not seek any adjournment. The applicant is in jail in this case since 31.7.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted and there is no apprehension apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

8. Learned A.G.A. on the other hand submits that the applicant is accused of committing an heinous offence and despite being provided time to participate in the trial, he did not present himself and therefore he is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is evident that initially the FIR of this case was lodged under Section 304-A IPC, the applicant had secured bail with regard to that offence as well as under Section 302, 201 IPC, however, the charge sheet was filed under Section 302 and 201 IPC. The filing of charge sheet was challenged before a Division Bench of this Court and initially protection from arrest was granted to the applicant, however at a later stage, the writ petition was dismissed as has become infructuous and thereafter, the order sheet of the trial placed on record would reveal that no coercive process or to say any process was issued by the trial court and it was on 9.12.2022 the process was issued by the trial court. Admittedly there was no intention on the part of the applicant to have caused death of the deceased and arguments and counter arguments has been raised in support and against of the arguments, that the factual

matrix of this case may attract Sections 302, 304 or 304-A IPC and the same in the considered opinion of this court is to be adjudicated by the trial court during the course of trial. Suffice is to say, that the parties are in agreement with regard to the factual matrix that the applicant was not having any intention to cause death of the deceased and the knowledge of the criminal negligence as the case may be better adjudicated by the trial court.

10. Thus, for the reasons mentioned herein before, in the considered opinion of this Court the facility of bail may safely be extended to the applicant. The bail application moved on behalf of the applicant is, thus, **allowed**.

11. Let the applicant- **Goli @ Masiullah** involved in the aforesaid case be released on bail on 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.

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

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

14. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 29.11.2023

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