

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11759 of 2023

Applicant :- Bablu Pandey @ Upendra Pandey

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

Counsel for Applicant :- Vineet Kumar Mishra, Yagyavesh Srivastava

Counsel for Opposite Party :- G.A., Anil Kumar Akela, Anil Kumar Akela

Hon'ble Brij Raj Singh, J.

1. Heard Sri Vineet Kumar Mishra, learned counsel for the applicant, Sri Anil Kumar Akela, learned counsel for the complainant and Sri Ran Vijay Singh, learned A.G.A. for the State.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.206 of 2023 under Sections 34, 323, 504, 506, 325 and 304 IPC, Police Station Kotwali Sahar, District Hardoi.

3. It has been submitted by learned counsel for the applicant that FIR was lodged on 22.03.2023, making allegation that three name accused persons and two other unknown persons had assaulted the deceased and general allegation of assault has been levelled to all the accused. It is further mentioned in the FIR that said incident took place due to personal enmity between the parties. He further submitted that the deceased received two injuries ; injury no.1 is old healed stitched wound on right side of head 2 cm above right ear and injury no.2 is stitched wound on left side top of the head but it is not specified that who caused the said injuries and no weapon has been assigned to the accused in the FIR. However, in the statement recorded under section 161 Cr.P.C., the complainant has stated that all the accused assaulted the deceased by fist and bricks but again he has not specified as to how said injuries were caused. It has also been submitted that the deceased died after 47 days due to septicemia. It has also been submitted by learned counsel for the applicant that there is no intention to kill the deceased and altercation had taken place

between the parties and cross FIR has also been lodged by Smt. Meera Pandey, who is wife of accused applicant on 02.04.2023 under sections 452, 323, 324, 504 and 506 IPC in which complainant and other family members are accused. Learned counsel for the applicant has submitted that wife of the applicant Smt Meera Pandey also received injuries and her medical examination was conducted on 24.03.2023 and she was brought to the hospital by the police. It has also been submitted that it is a case of sudden provocation and there is no intention to kill the deceased and at the most the case is falling within the purview of section 304 Part-II IPC. The applicant is in jail since 24.05.2023.

4. Learned A.G.A. has opposed the prayer for bail. Sri Anil Kumar Akela, learned counsel for the complainant has submitted that motive has been assigned in the FIR and the applicant and the other co-accused are aggressor and they had assaulted the deceased due to which he died. It is a heinous crime, therefore, the bail application of the applicant is liable to be rejected.

5. 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 at the most the case is falling within the purview of Section 304 Part-II IPC and cross FIRs' have been lodged between the parties and the argument that both the parties have received injuries, general role of assault has been levelled to all the accused in the FIR and it is not specified as to who caused the fetal injuries upon the deceased, therefore, I am of the opinion that the applicant is entitled to be released on bail.

6. Let the applicant, namely, **Bablu Pandey @ Upendra Pandey**, 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 :- 18.11.2023

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