

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11822 of 2023

Applicant :- Alok @ Rishu

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

Counsel for Applicant :- Arun Sinha, Ram Chandra Singh, Umang Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.
2. In pursuance of the order of this Court dated 09.10.2023, learned A.G.A. informs that having gone through whole case diary, it appears that in the medical examination of the deceased, nature of injuries could not be noted when the deceased was alive at any stage except as noted in the postmortem report.
3. Heard Shri Arun Sinha, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Alok @ Rishu** for grant of bail, in Case Crime No.367 of 2022, under Sections 302, 307, 34, 323, 452, 506 I.P.C., Police Station Ram Nagar, District Barabanki, during trial.
5. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.
6. It is further submitted that in the F.I.R., which has been lodged by the informant Mohit Kumar on 12.06.2022 pertaining to the incident occurred on 11.06.2022 at about 06:00pm, general role of assault with Farsha, Ballam, lathi and danda has been assigned to all the accused persons named in the F.I.R. and the role of assault with farsa has been assigned to the instant applicant. It is also submitted that in the F.I.R. or in the

statement of the prosecution witnesses no specific role has been assigned to the applicant with regard to the assault committed on the deceased.

7. Elaborating further it is submitted that in the postmortem report of the deceased of date 17.06.2022, eight injuries are shown to have been sustained of the nature of stitched wounds, abrasions and contusions and the fatal injury is shown to have been sustained on the head of the deceased beneath which perital bone is shown to have been fractured. It is vehemently submitted that in absence of any specific role and nature of the injury, the same may not be attributed to the applicant and at this stage, it may not be ascertained as to who from amongst the accused persons was the author of the fatal injury.

8. It is further submitted that there is cross version of the incident and a cross F.I.R. in this regard was lodged by the applicant himself by moving an application on 11.06.2022, which was registered by the concerned police station on 12.06.2022 against the deceased and injured Manoj Kumar and in the incident injured namely Ashok Kumar and Sunil @ Guddu have also sustained head injury.

9. It is vehemently submitted that the incident as per version of the F.I.R. and the statement of the prosecution witnesses had occurred in a spur of moment without there being any premeditation and having regard to the fact that there is cross version of the incident and no specific allegation or overact has been attributed to the applicant, applicant is entitled to be released on bail. It is further submitted that similarly placed co-accused persons of the alleged crime, namely, Sunil @ Guddu, Ashok @ Bablu and Anil @ Pappu have been released on bail by this Court vide orders dated 21.09.2023 and 09.10.2023 passed in Criminal Misc. Bail Application Nos.675 of 2023, 11819 of 2023 and 11831 of 2023, respectively.

10. It is next submitted that applicant is in jail in this case since 29.10.2022 and he is not having any criminal history, charge-sheet in this case has already been submitted and 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.

11. 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, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

12. Having heard learned counsel for the parties and having perused the record, it is evident that F.I.R. of the instant case has been lodged by the informant on 12.06.2022 pertaining to the incident, which had occurred on 11.06.2022. The role of assault with farsa has been attributed to the instant applicant while to other named accused persons role of assault with ballam and lathi has been assigned. There is no medical report pertaining to injured Manoj Kumar, however, perusal of some injury report, which has been recorded by the investigating officer in the case diary, it appears that some injuries are shown to have been sustained by Manoj Kumar on his head. So far as the deceased is concerned, the postmortem report would reveal that he has sustained eight injuries, one of such injury is situated on the head has been found fatal, beneath which the perital bone has also been found fractured with subdural hematoma. The defence of the applicant appears to be that since general role of assault has been assigned to all the accused persons named in the F.I.R. and out of five persons named in the F.I.R., three persons have been shown to be carrying lathi and danda and role of carrying farsa has been assigned to applicant and the nature of fatal injury has not been disclosed anywhere and also that it may not be ascertained at this stage, as to who from amongst the accused persons was the author of the fatal injury. Cross case has also been claimed and attention of this Court has been drawn towards written application on the basis of which cross F.I.R. has been lodged by the applicant, which has been registered as Case Crime No.370 of 2022 at police station concerned, wherein the date on the application is shown as 11.06.2022 and it is submitted that the police in connivance with the other party has lodged the F.I.R. on 12.06.2022, while the medical examination of the injured person namely Sunil @ Guddu and Ashok Kumar has been done on 11.06.2022. Thus it appears that there is a cross case of this case. Admittedly no overact has been assigned to the instant applicant. Similarly placed co-accused persons of the alleged crime, namely, Sunil @ Guddu, Ashok @ Bablu and Anil @ Pappu have been released on bail by this Court. Thus keeping in view all the facts and circumstances of this case, in the considered opinion of this Court, facility of bail may be extended to the applicant. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 29.10.2022 and he is not having any criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

13. 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.

14. Let the accused/applicant- **Alok @ Rishu** 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.

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

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

17. 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 :- 12.10.2023

Anupam S/-