

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13613 of 2022

Applicant :- Mohd. Altaf

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

Counsel for Applicant :- Rajeev Kumar Mishra Rudra,Rashmi Singh,Sanjay Prakash Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Supplementary affidavit filed on behalf of the applicant is taken on record.
2. Heard Ms. Rashmi Singh, learned counsel for the accused-applicant as well as Ms. Rani Singh, learned counsel representing the State and perused the record.
3. This bail application has been moved by the accused/applicant - **Mohd. Altaf** for grant of bail, in Case Crime No.354 of 2022, under Sections 323, 504, 506, 307, 302 I.P.C., Police Station Kotwali Nagar, District Gonda, 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 he has not committed any offence as claimed by the prosecution.
5. It is further submitted that the story as cooked up by the prosecution in order to implicate the applicant may not be believed on the touchstone of probability. It is also submitted that at the relevant point of time, applicant was not even present at the spot and the same has been admitted by the prosecution witness no.1 Salman (informant) in his cross examination and therefore, the complicity, which has been shown against the applicant for participation in the crime, is patently wrong, absurd and could not be believed.
6. It is also submitted that no motive was also available to the applicant for commission of crime as the same could only be attached with main accused of the crime namely Naseem, who is the husband of one of the deceased namely Baby. It is further submitted that no recovery of any incriminating article has been shown either from the possession or on the pointing of the

applicant and a knife is shown to have been recovered on the pointing of the main accused Naseem.

7. It is further submitted that the applicant, who is the brother of main accused Naseem, was not having any concern with the dispute, which has emerged between the husband and wife and thus only on account of his relation with main accused Naseem, his name has been dragged into this case.

8. It is next submitted that the applicant is in jail in this case since 29.05.2022 and only two prosecution witnesses have been testified before the trial court so far and keeping in view the pace with which the trial is going on before the trial court, it is not expected to conclude the same in near future. The applicant is not having any criminal history and the charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

9. Learned counsel representing the State vehemently opposes the prayer of bail of the applicant on the ground that it is a case, where two innocent ladies have been done to death by a concerted effort of the applicant and other accused persons and specific role of assault with knife has been assigned to the instant applicant and the injuries, which have been shown on the person of the deceased, corroborates with the weapon shown in the hands of the applicant and other accused persons.

10. It is also submitted that the investigating officer during the course of investigation has recorded the statement of both the deceased persons under Section 161 Cr.P.C. and having regard to the provisions contained under Section 32(1) of the Indian Evidence Act, both these statements would be treated as dying declaration as the cause of death of two deceased persons has been stated by them in these statements and keeping in view the gravity of the offence, applicant is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is evident that in the F.I.R. specific role of assault with knife has been attributed to the applicant and other accused persons. The statements of two deceased persons were recorded by the investigating officer, when they were alive, under Section 161 Cr.P.C. and they both have assigned the role of assault to the instant applicant also. The statements of two prosecution witnesses have been recorded before the trial court and in these statements also, the role of assault with knife has been assigned to the applicant and other accused persons. By drawing attention of this Court towards some portion of the

statement of the prosecution witness no.1 Salman, various submissions have been raised on behalf of the applicant in order to show that the incident is doubtful so far as the instant applicant is concerned. The statement of any witness is to be read in totality and the same cannot be read in piecemeal and it is the overall trustworthiness of the evidence of any witness, which may persuade the court. Thus there is no logic in reading in between the lines. The postmortem report of both the deceased persons would reveal that they have sustained various injuries, which could only be attributed to the sharp-edged weapons.

12. Thus having regard to all the facts and circumstances of this case and having regard to the specific fact that two innocent ladies have been done to death on a minor dispute with regard to matrimonial strained relations, I do not find any good ground to release the applicant on bail. Thus the bail application moved on behalf of applicant - **Mohd. Altaf** is hereby **rejected**.

13. However, the trial court is directed to proceed with the trial and record the evidence of the prosecution witnesses by fixing the case on every short interval and not to grant adjournments to either party without there being any basis adhering to the provisions as contained under Section 309 Cr.P.C.

14. 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.

15. Office is directed to immediately send a copy of the instant order to the trial court concerned through the Sessions Judge concerned for strict compliance.

Order Date :- 29.11.2023

Anupam S/-