

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13845 of 2022

Applicant :- Ramesh

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

Counsel for Applicant :- Arun Kumar Singh, Arun Kumar Singh, Shrawan Kumar, Shrawan Kumar Verma

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Shani Pratap Singh, learned A.G.A. for the State and perused record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.383 of 2022 under Section 304 IPC PS Mohammadi, district Kheri.

3. Learned counsel for the applicant has submitted that the FIR has been lodged by the wife of deceased and in the FIR she stated that in a drunk state, the applicant came to her house and asked her husband to give money for purchasing liquor. Her husband denied and thereafter, altercation took place and the applicant suddenly assaulted the deceased with stick due to which he received injuries and died. It has been submitted by the learned counsel for the applicant that in the statement of wife of the deceased under Section 161 CrPC, she has stated that her husband also used to take liquor and on the date of incident at 6.00 O' Clock, the applicant came to her house and asked money to purchase liquor which was denied. Thereafter, they had gone towards the grove where her husband was beaten. Similarly, the statement of Bablu Goswami, Baby, and Omvati has been recorded and the same fact has been reiterated by them. Learned counsel for the applicant has submitted that even if the case is taken on the face value, the same will attract Section 304 Part-2 IPC. He has submitted that there is no intention to kill and there is no premeditation and no mens rea. He has submitted that it is case of sudden provocation and admittedly, the applicant was in intoxicated state and out of sudden provocation, the applicant hit the deceased with stick otherwise, there was no intention. He has further submitted that the applicant has no criminal history and is in Jail for 16 months i.e., since 4.6.2022.

4. On the other hand, learned A.G.A. though opposed the bail and has submitted that as per prosecution case, the applicant assaulted the deceased with stick and deceased received five injuries out of which three injuries are on head and two injuries are on other part i.e., chin and chest. He has submitted that it is a case of murder and ingredients of Section 304 IPC are attracted, therefore, bail is liable to be rejected.

5. Considering over all facts and circumstances of the case, the argument that there was no intention to kill, the argument that it is a case in which provisions of Section 304 Part-2 IPC is attracted the argument that there is no premeditation and mens rea to kill the co-accused, it is a fit case for bail.

6. Let the applicant, Ramesh 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.

7. 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 :- 18.10.2023

Rajneesh JR-PS)