

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13733 of 2022

Applicant :- Haripal

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

Counsel for Applicant :- Dinesh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant, Sri Ran Vijay Singh learned AGA for State and perused record.

2. This application for bail is file by the applicant for bail in case crime No.127 of 2021 under Section 304 IPC, PS Chhapiya district Gonda.

3. Learned counsel for the applicant has submitted that FIR has been lodged by the son of deceased making allegation that on 23.4.2021 on 10.45 in the night, his father and his uncle (the present applicant) had quarrelled together and there was Marpeet between them. The accused applicant assaulted his father with Baint (handle of axe) due to which his father received injuries. He was taken to Hospital where, he was declared dead. Learned counsel for the applicant has submitted that post mortem report indicates that there are three injuries and cause of death is anti-mortem injury. He has submitted that the deceased and the applicant were in intoxicated state and they quarrelled together and in the Marpeet the deceased received injuries due to which he died. He has submitted that the case is coming with the purview of part-2 of Section 304 IPC because Marpeet was done in the state of intoxication. He has further submitted that statement of PW-1 has been recorded and he has supported the prosecution case but the statement of PW-2 does not support the prosecution case.

4. Learned counsel for the applicant has invited attention of this Court towards the statement of PW-2 and 3 and he has submitted that PW-2 is father of both deceased and the applicant, and he has deposed before the Court that the quarrel had taken place between the two sons and both have gone outside the house. Learned counsel for the applicant tries to persuade the Court that the father did not see the incident and he has not supported the prosecution case. Similarly, he has submitted that PW-3 is witness of the incident who is belonging to the same village and he has also not supported the prosecution case. He has further submitted that PW-1 is the son of deceased and his statement recorded before the Trial Court is not supporting the prosecution case because he has stated that Hansiya (sickle) was used but the injuries are not corroborating with the prosecution case. He has further submitted that the death cannot occur due to the injury as mentioned by the complainant.

5. On the other hand, learned AGA has pointed out that FIR is promptly lodged

by the son which indicates that deceased was assaulted with Baint (handle of axe) and deceased received three injuries which are quoted below:-

- "1. LW 2 cm x 1 cm back of head underlying bone fracture.
2. LW 3 x 1.5 cm over Rt side leg 8 cm below right knee.
3. Multiple abrasion 15x3 cm left side leg 6 cm below left knee."

Cause of death was haemorrhage and shock due to anti-mortem injuries.

6. Learned AGA has submitted that the best piece of evidence in the present case is the PW-1 who has deposed that the applicant had come to the place of incident in intoxicated position, started quarrel with his father and he caused injuries with the Baint (handle of axe). He has further submitted that eyewitness account is present and his statement indicates that prosecution case is established. PW-2 is the father of deceased that is why, he is not supporting the prosecution case fully.

7. Considering over all facts and circumstances of the case, the argument that trial is going on and PW-1 is supporting the prosecution case and he has specifically levelled allegation that deceased was assaulted by the applicant, it is not a fit case for bail.

8. The application for bail is rejected. The Trial Court is directed to conclude the trial within six months without being influenced in any manner by the observations made hereinabove.

Order Date :- 22.11.2023
Rajneesh JR-PS)