

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12112 of 2023

Applicant :- Baddal @ Badruddin

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

Counsel for Applicant :- Anil Mishra,Rajat Raj Narayan Bajpai

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Anil Mishra, learned counsel for the applicant, Sri G.D. Bhatt, learned A.G.A.-I for the State assisted by Shri Devanshu Pratap Singh, Advocate 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.249 of 2023 under Section 120B, 302, 307 and 504 IPC, PS Pali, District Hardoi.
3. Learned counsel for the applicant has submitted that the father of the deceased lodged report mentioning that he has married his daughter Yasmin to Nasruddin belonging to his village. Further, it is mentioned in the FIR that on 19.06.2023 at 12:00 clock in the day time, his daughter Yasmin and his elder daughter Shaharbano had gone to the mango grove to pluck the mango along with other family members. Co accused Nasruddin husband of Yasmin came to the place of occurrence and fired at Shaharbano out of which she received injury in her chest and died on the spot. Thereafter, he assaulted Yasmin also, who received injury. The FIR further indicates that it is mentioned by the compliant that the applicant, his other sons namely Shamsuddin and Munna and co accused were present on the spot.
4. Learned counsel for the applicant has submitted that a bare perusal of the FIR indicates that there is no allegation that the applicant assaulted the deceased rather allegation is in clear term against Nasruddin, who fired at the deceased and injured Yasmin. It has been submitted that statement of Yasmin has been recorded under Section 161 CrPc and she has improved the version of FIR in which she has stated that on pointing out

of father i.e. applicant, the co accused Nasruddin fired. It has been submitted by the learned counsel for the applicant that the main assailant is Nasruddin and applicant has been just implicated for the reasons that he is father of the co accused otherwise he has not committed the offence. The cause of death is firearm injury, which has been caused by co accused. He further submitted that the case of the applicant is distinguishable with the co-accused Nasruddin. It is also submitted that the applicant is in jail since 22.06.2023 and he has no criminal history.

5. On the other hand, learned A.G.A. opposed the prayer for bail and has submitted that in the statement under Section 161 CrPC role has been denied that on the pointing out of the applicant, the firing was done by co accused, therefore, he is also liable for the act and he has submitted that he is the person who conspired the entire plot. Therefore, bail is liable to be rejected.

6. Considering the over all facts and circumstances of the case, the argument that the applicant is not assailant, the argument that applicant was present on the place of occurrence as per the version of FIR but he has not been assigned role of firing, the argument that the applicant has no criminal history and the argument co-accused Nasruddin is the main assailant, it is a fit case for bail.

7. Let the applicant, namely, **Baddal @ Badruddin** 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.

8. 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 :- 7.12.2023

Raj