

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12252 of 2023

Applicant :- Amit Lodhi

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

Counsel for Applicant :- Neeraj Singh

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 up to date case diary of the case and charge sheet in this case has already been submitted.
2. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Amit Lodhi** for grant of bail, in Case Crime No.104/2023, under Sections 143, 147, 323, 304 I.P.C., Police Station- Sohramau, District- Unnao, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The F.I.R. of this case has been lodged by the father of the deceased on 11.07.2023 at Police Station- Sohramau, District- Unnao against the driver and helper of Mahindra Yuva 575 DI Tractor bearing registration No. UP 35 BA 0096 and three unknown persons with the allegations that on 10.07.2023 at about 02.00 PM, the deceased had parked his Auto rickshaw on the road situated in front of his house and soon thereafter, the tractor bearing registration No. UP 35 BA 0096 arrived and the driver and helper of the same asked the deceased to remove his auto rickshaw so that they may pass, however, an altercation had taken place with the driver and helper of the tractor and they in turn called other three unknown persons and started assaulting the deceased and when he (informant) attempted to save his son, he was also pushed aside and when the deceased was being taken to hospital, he succumbed to the injuries. The post mortem report of the deceased would reveal that four injuries of the nature of abrasions and contusions have been found on different parts of his body and the cause of death could not be ascertained and the viscera of the deceased was preserved and the report of the same is stated to be awaited.

5. Highlighting the above, it is vehemently submitted that the story as has been cooked up by the informant of the instant case is highly improbable, concocted and could not be believed as in the post mortem report, the death is not related to the injuries which appears to be of superficial/minor nature and in the ordinary course of nature may not be sufficient to result in the death of the deceased. Thus, the whole prosecution story is belied as the medical evidence is in direct contrast with the ocular version of the story. Reliance in this regard has been placed on the law laid down by the Hon'ble Supreme Court in ***Thaman Kumar Vs. State of Union Territory of Chandigarh, (2003) 6 SCC 380.***

6. It is further submitted that falsity of the story as cooked up by the prosecution would also be evident from the fact that no injury of any kind has also been sustained by the informant and material improvement has been made by the informant in his statement recorded under Section 161 Cr.P.C. and the statement given by the sister-in-law of the deceased, namely, Anita could also not be believed.

7. While drawing the attention of this Court towards opinion of the investigating officer made in the case diary after perusing the video allegedly retrieved from the mobile phone of the applicant, which was taken into custody by the investigating officer, it is submitted that even if the story of the prosecution is taken on its face, it is alleged that all accused persons have assaulted the deceased and thereafter, the applicant started making a video while the other four accused persons, namely, Shivam, Mobin, Arif and Vikas were assaulting the deceased and submits that continuous assault has been assigned to the other four accused persons and the role of participation in the *maar-peat* initially and thereafter of making a video has been assigned to the applicant, while the truth is that since the beginning of the alleged *maar-peat* the applicant was not involved therein at all and was making a video wherein, he has not been seen assaulting the deceased. Thus, the role of the applicant is distinguishable from the role of the other accused persons. The applicant is in jail in this case since 15.07.2023 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.

8. 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.

9. Perusal of the record would reveal that claim has been made by the informant and other prosecution witness, namely, Anita that the death of the deceased has been caused by the assault given by the applicant and other four accused persons, however, the applicant nor the other four accused persons were named in the F.I.R. The driver and helper of the alleged tractor named in the F.I.R. admittedly have not been charge sheeted by the investigating officer. Significantly, in the post mortem report, the cause of death could not be ascertained, while four injuries of the nature of abrasions and contusions have been noticed at different parts of the body of the deceased and it is in this background, it is vehemently submitted that the medical evidence is in direct contrast with the ocular version of the incident and reliance has been place on the law laid by Hon'ble Supreme Court in ***Thaman Kumar (supra)***. The role of making a video has also been attributed to the instant applicant while the claim of the applicant that he was only filming a video and was not involved in any *maar-peet*, thus, the role of the instant applicant appears to be distinguishable from the role of the other four accused persons, whose plea of bail at the appropriate time would be considered independently without being guided by any observation of this Court. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 15.07.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

10. 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**.

11. Let the accused/applicant- **Amit Lodhi** 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.

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

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

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.

Order Date :- 16.10.2023

Gurpreet Singh