

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12360 of 2023

Applicant :- Raj Kumar Kashyap

Opposite Party :- The State Of U.P. Thru. Thru. Addl. Chief Secy. Deptt. Home Sectt. Lko

Counsel for Applicant :- Rama Pati Shukla, Avneesh Kumar Shukla

Counsel for Opposite Party :- G.A., Ashish Kumar Shukla

Hon'ble Brij Raj Singh, J.

1. Counter affidavit filed on behalf of the complainant today in Court is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. and perused the record.
3. The applicant is involved in Case Crime/FIR No. 0070 of 2023, under Sections 147, 302 and 506 IPC, Police Station Munshiganj, District Amethi.
4. It has been submitted by learned counsel for applicant that wife of the deceased lodged an FIR in which it has been stated that her husband (deceased) was standing near the Khadanza and due to old enmity, the applicant and other co-accused persons, who are named in the FIR had pushed her husband (deceased) and his chest and genital part was pressed. On hearing the shrieks of her husband, she reached at the place of occurrence, the accused persons chased her. She had entered into her house. Thereafter her husband became unconscious and died. It is further submitted that the brother of deceased Ram Laut had informed the police, which is entered in G.D. No. 32 and he mentioned that his brother got heart-attach and on his information the inquest was prepared on 21.04.2023. It is

further submitted that FIR has been lodged by the complainant after four days of the incident i.e., 25.04.2203, which is much belated. The deceased received injury in his house by himself or by other reason but the applicant did not cause the said injury.

5. It is further submitted that the deceased died due to heart-attack. The postmortem report shows that cause of death is due to ante-mortem injuries, which is not corroborating as per the version of the brother of the deceased, who had informed the police on the same day regarding the incident. It is further submitted that at the most the case falls within the purview of Section 304-II IPC as there was no preparation to commit such crime nor intention to kill the deceased rather it is a sudden case of provocation. He has cited Section 300 exception Clause IV.

6. On the other hand, learned A.G.A. for the State has opposed the prayer for bail and submitted that FIR has been lodged by the wife of the deceased, who is the real victim. She has stated the entire fact as to how the deceased was overpowered by the applicant and other co-accused persons and how the chest and genital part of the deceased was pressed. Further submission is that as per postmortem report, there is contusion 6 c.m. x 4 c.m. on right side of head about 4 c.m. above right ear. The postmortem report further indicates that on the genital organs scrotum swelling was found and haematoma was also present. The deceased died due to ante-mortem injuries as opined by the doctor. Therefore the prosecution case is evident from the medical report. It is further submitted that the Dr. Shubham, who conducted autopsy on the body of the deceased, has been examined by the police in which he has stated that haematoma was present and the deceased died due to ante-mortem injuries. Learned A.G.A. for the State has further submitted that the statements of independent witnesses Sunita, Smt. Malti Devi, Smt. Lakhraji and Mukesh were recorded in which they have

admitted that some altercation took place between the deceased and applicant and other co-accused persons.

7. Similarly learned counsel for complainant has also adopted the arguments of learned A.G.A. for the State and submitted that brother of the deceased Ram Laut is an illiterate man and he is unable to sign properly and his statement was never recorded by the police under Section 161 Cr.P.C.

8. Considering the overall aspects of the matter and keeping in view the postmortem report and injuries caused to the deceased, which is corroborated with FIR and statements of the witnesses, I do not find it a fit case for bail. Accordingly, the bail application is hereby rejected.

9. However, it is made clear that any observation made here in above shall not affect the proceedings of the trial court.

Order Date :- 18.12.2023

Virendra