

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12514 of 2023

Applicant :- Mahipal

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

Counsel for Applicant :- Avikshit Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Avikshit Mishra, learned counsel for the accused-applicant as well as Shri Asif Khan, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Mahipal** on bail, who is involved in Case Crime No. 119 of 2023 under Sections 147, 148, 304 I.P.C, Police Station Shahabad, District Hardoi.

3. Learned counsel for the applicant submitted that the First Information Report has been lodged by the father-in-law of the deceased, wherein it is mentioned that in the festival of Holi, the deceased had come for Holi Milan at the house of the complainant. He further mentioned that the co-accused Chhaggoo, Tahar, Shivam, Romil and Rahul assaulted the deceased and other family members. Learned counsel for applicant further submitted that the applicant is not named in the F.I.R. and not even in the statements of complainant Kashiram, nor in the statement of his son, Adesh, recorded under Section 161 Cr.P.C and name of the applicant has not come into light and no role has been assigned to him. Learned counsel for applicant has further invited attention of the Court towards the post-mortem report which indicates that there are four abrasion on the body of deceased. However, in the statement of witness namely Khushiram, the name of applicant has surfaced on record, but his statement is general in nature and he has assigned general role of assault to other co-accused and it is a weak evidence and the applicant has been falsely implicated in the present case.

4. Learned counsel for the applicant further submitted that the main allegation of assault has been levelled against the co-accused Rahul, and he has been granted bail by this Court in Criminal Misc. Bail Application No. 11895 of 2023, vide detailed order dated 05.10.2023. He further submitted that the case of the applicant is standing on a better footing than that of the co-accused Rahul, because the applicant was neither named in the F.I.R, nor in the statement of complainant or his son, recorded under Section 161 Cr.P.C, and co-accused has already been

granted bail, therefore, the applicant is entitled for bail. He further stated that there is no previous criminal history of the applicant and he is languishing in jail since 31.05.2023.

5. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that the name of the applicant has surfaced in the statement of Khushiram and also on the basis of instructions, he has mentioned that the name of the applicant has surfaced in the statement of one Appi @ Kamla Kant and he has read over the statement of the said witness, but he could not point out that Appi had assigned role of assault to applicant, rather he has assigned the role of assault to the other persons who were present at the place of occurrence.

6. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that the applicant is not named in the F.I.R nor in the statements under section 161 Cr.P.C of complainant and his son, the argument that there is no direct evidence found against the applicant, the argument that co-accused, who is named in the F.I.R and who has been assigned the main role of assaulting the deceased, has already been granted bail, I find it to be a fit case for grant of bail.

7. Accordingly, the bail application is **allowed**.

8. Let the applicant **Mahipal** 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 her 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.

9. 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 :- 19.10.2023

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