

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12554 of 2023

Applicant :- Shiv Kumar Maurya Alias Sadhu

Opposite Party :- State Of U.P. Thru. Prin. Secy. (Home), U.P. Lucknow

Counsel for Applicant :- Praveen Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Praveen Tripathi, learned counsel for the applicant, Shri Asif Khan, learned AGA for the State and perused the record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.324 of 2023 under Sections 304 IPC., Police Station Karnailganj, District Gonda.

3. Learned counsel for the applicant submitted that the brother of the deceased lodged FIR making allegation that his brother was drug addict had gone to collect junk materials in the night of 14/15 June, 2023 and the applicant is also a drug addict and they had quarrel between them and out of intoxication, his brother was assaulted by the applicant due to which he received injury and died. Learned counsel submitted that FIR has been lodged on 15.06.2023 at about 3:30 p.m. whereas the incident had taken place at 3:00 a.m. in the night of 15.06.2023.

4. Learned counsel for the applicant has invited attention of this Court towards the inquest report, which is has started from 6:35 p.m. and ended up to 7:30 p.m. on 15.06.2023 and in the FIR, the complainant has mentioned that the inquest has been conducted by the police. The FIR was lodged at 3:30 p.m. therefore, the FIR is ante time because the inquest report indicates that the inquest was conducted between 6:35 p.m. to 7:30 p.m.

5. Learned counsel has further submitted that statement of Gulnaaz (wife of deceased) was recorded under Section 161 Cr.P.C. on 17.06.2023 and she has stated that she had seen the applicant and the deceased quarreling together and both were in intoxicated position. learned counsel for the applicant submitted that neither the complainant nor the wife of the deceased are witness of fact. Learned counsel submitted that if wife of the deceased was witness, she would have lodged FIR promptly and after two days, her statement has been recorded and the FIR is also ante time.

6. Learned counsel further submitted that post mortem

report indicates that deceased died due to shock and hemorrhage as a result of ante mortem injuries. Learned counsel further submitted that cause of death is also contradictory. The applicant has no criminal history and is languishing in jail since 17.06.2023.

7. Learned AGA has opposed the prayer for bail and has submitted that wife of the deceased had supported the prosecution case therefore, bail is liable to be rejected.

8. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and considering the argument that FIR is ante time ; argument that wife of the deceased and the complainant are not eye witnesses ; argument that FIR was not lodged promptly either by wife or the complainant, therefore, I am of the opinion that the applicant is entitled to be released on bail.

9. Let the applicant, **Shiv Kumar Maurya @ Sadhu**, 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.

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 :- 27.10.2023

Pks