

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12685 of 2023

Applicant :- Ashok Alias Arvand Kumar

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

Counsel for Applicant :- Aman Kumar Shrivastav

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 and charge sheet in this case has also been submitted.
2. Heard Shri Aman Kumar Shrivastav, 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- **Ashok Alias Arvand Kumar** for grant of bail, in Case Crime No. 196 of 2023, under Sections 147, 323 and 304 I.P.C., Police Station Neemgaon, District Kheri, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of this case has been lodged by the wife of the deceased on 25.06.2023 at Police Station Neemgaon, District Kheri alleging therein that on 13.06.2023 her husband was taken by the applicant and other co-accused Sanjay on a motorcycle at about 9:00 am. to 'Salia' and both these accused persons had come to attend the marriage of the daughter of co-accused Lale Babu whose relation is inimical with the family of the informant on the basis of some dispute pertaining to immovable property. It is further stated that all accused persons named in the F.I.R. assaulting the deceased at a 'brick kiln' whereby he sustained grievous injuries and when he was taken to the hospital, he was declared broad dead.
5. Highlighting the above facts, it is submitted that the postmortem report of the deceased would reveal that he has sustained two injuries on his forehead of the nature of incised wounds and contusion and the story of assault by eight persons named in the first information report has been disbelieved by

the investigating officer as the charge sheet could only be filed against three accused persons including the applicant and co-accused persons Sanjay and Lale Babu.

6. It is vehemently submitted that the story, as cooked up by the informant in the first information report as well as in her statements recorded under Section 161 Cr.P.C. is highly improbable, concocted and could not be believed due to inherent weaknesses. Elaborating further, it is submitted that admittedly the informant was not an eye witness and the allegation of only taking the deceased with them has been levelled against the applicant and co-accused Sanjay, which is belied by the fact that the first information report has been lodged by the informant on 25.06.2023, while the incident is shown to have occurred on 13.06.2023 and there is no explanation of such a huge delay, moreover, this story could also not be believed in view of the fact that on 13.06.2023 (the date of incident) an application was given by the father of the deceased to the concerned police station alleging therein that deceased had gone to the 'brick kiln' for labour on 13.06.2023 at 12:00 pm. and he was found in an injured condition there and, thereafter when he was taken to the doctor he was declared dead.

7. Highlighting the above facts, it is submitted that in the information given by the father of the deceased to the concerned police station with regard to the death of the deceased, there is no whisper about any assault given by the applicant or any of the accused persons named in the first information report and there is contradiction with regard to the departure of the deceased from his house to the 'brick kiln' where he was allegedly working, as the informant stated that the deceased was taken on 13.06.2023 at 9:00 am. while the father of the deceased in the written information given by him stated that he had gone himself to the 'brick kiln' at 12:00 pm. on 13.06.2023. Thus, it is only on the basis of assumptions and suspicion, the F.I.R has been lodged and the applicant has been implicated. It is vehemently submitted that patent illegality has been committed by the trial Court as joint bail application was moved by the applicant and co-accused Lale Babu, while the bail has been granted by the same order to the co-accused Lale Babu but without assigning any reason the prayer of bail of the applicant has been rejected.

8. It is further submitted that even if the story, as cooked up by the informant is believed for the sake or argument, the only condition of 'last seen' without there being any corroborative circumstance would not be sufficient to deny the facility of bail to the applicant. Applicant is languishing in jail in this case

since 08.09.2023 and he is not having any criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

9. 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, therefore, he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the family of the informant including the deceased and the co-accused Lale Babu are highly inimical towards each other on the basis of a dispute pertaining to 'immovable property'. There is no whisper either in the F.I.R. or in the statement of the informant recorded under Section 161 Cr.P.C. with regard to any enmity of the applicant with the deceased. Thus, the motive for committing offence prima facie appears to be available to the co-accused Lale Babu, who has already been granted bail by the trial Court, vide order dated 27.09.2023 passed in Bail Application No. 1364 of 2023 with the same order the facility of bail has been denied to the instant applicant and the grievance of the applicant appears to be that no reason for denying the facility of bail to the applicant has been given, while the facility has been extended to the co-accused Lale Babu, who was also having motive. The only evidence, which appears to be available against the applicant is the 'last seen' of the deceased with the applicant. The information in writing given by the father of the deceased on 13.06.2023 is highlighted by learned counsel for the applicant vis-a-vis the first information report lodged by the informant with a delay of almost 12 days in order to show that the story of 'last seen' or taking of deceased by the applicant with him is also not believable.

11. Be that as it may, the allegations and counter allegations may be better appreciated by the trial Court at an appropriate stage. Applicant is languishing in jail in this case since 08.09.2023 without any criminal antecedents and having regard to the case of the prosecution rests on circumstantial evidence and keeping in view the circumstances alleged against the applicant and also having an eye that co-accused Lale Babu has been granted bail by the trial Court, the facility of bail may safely be extended to the instant applicant. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

12. 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**.

13. Let the accused/applicant- **Ashok Alias Arvand Kumar** 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.

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

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

16. 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 on the merits of the case.

Order Date :- 30.10.2023

Praveen