

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12739 of 2023

Applicant :- Rajendra Kumar Pal

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

Counsel for Applicant :- Arvind Kumar Verma, Atul Verma

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed on behalf of the State is taken on record. Rejoinder affidavit filed by learned counsel for the applicant is also taken on record.
2. Heard Shri Atul Verma, 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- **Rajendra Kumar Pal** for grant of bail, in Case Crime No. 135 of 2023, under Sections 279, 304 and 427 I.P.C., Police Station Vikas Nagar, District Lucknow, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. Applicant was not named in the F.I.R. and during the course of investigation the complicity of the applicant has surfaced as the driver of the erring vehicle.
5. It is vehemently submitted that even if the case of the prosecution is taken on its face, the same may not travel beyond 304-A I.P.C. However, the investigating officer without there being any basis or requisite intention or knowledge has submitted charge sheet under Section 304 I.P.C.
6. It is further submitted that it appears to be an admitted case that there was no enmity of the applicant with the deceased persons and, therefore, the accident, even if it is admitted, was an act of god and the contributory negligence on the part of the driver of the 'scooty' could also not be denied and the same is having consequences on the civil side and the same may never be termed as 'penal'

7. It is also submitted that the requisite intention or knowledge, as required for the invocation of Section 304 of the Indian Penal Code is completely absent in this case.

8. While drawing the attention of this Court towards a copy of the claim petition filed by the legal representatives of the deceased persons, it is submitted that the legal representatives of the deceased persons have also admitted in their claim petitions that the accident had occurred due to the rash and negligent driving of the applicant and, thus, there was no knowledge or requisite intention present to commit the offences.

9. It is next submitted that the applicant is languishing in jail in this case since 31.05.2023 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.

10. 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.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that on the fateful day the 'scorpio vehicle', which was allegedly being driven by the applicant had collided with the 'scooty', which was driven by Ram Singh and his wife and other children were also sitting as a 'pillion riders'. Allegations and counter allegations have been levelled with regard to the fact that the requisite knowledge or intention to invoke Section 304 I.P.C. was present or not present, however, the same could only be adjudicated by the trial Court after providing an opportunity to the parties to lead evidence. It appears to be an admitted situation that the prosecution has not alleged any enmity between the applicant and the deceased persons and it is in this background, it is vehemently submitted that even the case of the prosecution is admitted as such, the same may not be termed as culpable homicide not amounting to murder and the same at the most may be termed as death by rash and negligent driving, which is punishable under Section 304-A I.P.C. The claim petitions have also been filed by the dependents of the deceased persons and the requisite papers of the applicant, who is shown to be the driver of the vehicle e.g. Driving License, Registration Certificate of the vehicle, Pollution Certificate, Insurance Policy have been brought on record by the applicant by filing rejoinder affidavit. Applicant is languishing in jail in this case

since 31.05.2023 without any criminal antecedents. 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- **Rajendra Kumar Pal** 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 :- 17.11.2023

Praveen