

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13056 of 2023

Applicant :- Pawan Kumar

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

Counsel for Applicant :- Sunil Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Sri Sunil Kumar, learned counsel for the applicant and Sri Bipul Kumar brief holder assisted by Sri G.D.Bhutt learned A.G.A.-I for the State.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.96 of 2023 under sections 304, 34 IPC, Police Station Kotwali Dehat, District Sultanpur.

3. It has been submitted by learned counsel for the applicant that FIR has been lodged by the wife of the deceased and after looking into the version of the FIR, it is apparent that the complainant was not an eye witness. She has stated that her husband had gone to field to look after crop and her husband was beaten there. She has further mentioned in the FIR that Surendra and Chantu and 4-5 unknown persons had assaulted her husband. She has submitted that applicant is not an eye witness and whatever she has stated against the applicant the same is on the basis of surmises and conjecture. He has submitted that other witnesses have stated that on hearing noise, they reached to the place of occurrence and had seen the incident. Learned counsel for the applicant has submitted that after looking the statement of the witnesses, it is clear that they are not eye witnesses and the applicant has been falsely implicated in the present case. He has further submitted that co-accused Dharmendra Verma has been granted bail by this Court but admittedly, Dharmendra Verma has not been assigned role of assault.

4. On the other hand, learned A.G.A. has opposed the bail and has submitted that ocular witnesses, namely, Lal Bahadur, Deepak Kumar, Ram Pratap and Deep

Chandra Jaiswal have stated specifically that they had seen the deceased and an altercation took place between the applicant, Dharmendra Verma and the deceased thereafter applicant had assaulted with brick and the deceased received injuries and fell down on the ground and the accused and co-accused Dharmendra Verma ran away from the place of occurrence . Learned A.G.A. has further submitted that there are three antimortem injuries which are on vital part i.e. head of the deceased and the doctor opined that the deceased died due to antimortem head injury. The antimortem injuries of the deceased mentioned in the postmortem report is quoted below:-

"(1) Contusion of size 12x8 cm is present on right side of head just above to right ear.

(2) An abrasion of size 3 cm x 1 cm is present on right ear at posterior aspect.

(3) An abrasion of size 4 x 2 is present on back of left elbow."

5. After hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that four ocular witnesses, namely, Lal Bahadur, Deepak Kumar, Ram Pratap and Deep Chandra Jaiswal have assigned the role of assault against the applicant and the argument that postmortem report indicates that deceased received injuries which is corroborating with the prosecution case, therefore, I am of the opinion that the applicant is not entitled to be released on bail.

6. The bail application of the applicant- Pawan Kumar is **rejected**. However, learned trial court is directed to expedite the trial and conclude the same preferably within a period of ten months from the date a certified copy of this order is produced before it. It is made clear that any observation made hereinabove shall not affect the trial proceedings.

Order Date :- 6.12.2023
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