

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13399 of 2023

Applicant :- Jatashankar Tiwari

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

Counsel for Applicant :- Pankaj Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned AGA informs that he has procured complete instructions in the matter including upto date case diary.
2. Heard Shri Pankaj Kumar Shukla, learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
2. This bail application has been moved by the accused/applicant- **Jatashankar Tiwari** for grant of bail, in Case Crime No. 445/2023, under Sections 323, 325, 304, 504, 506 IPC, Police Station Kotwali Nagar, District Gonda, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. In the First Information Report which has been lodged by one of the alleged injured, namely, Dev Prakash Tiwari, general allegation of assault with 'lathi-danda' has been assigned to all the accused persons named in the FIR and similarly his statement as well as additional statement recorded under Section 164 Cr.P.C.
4. While highlighting the statement given by another injured, namely Mamta Tiwari, it is submitted that this witness has assigned the specific role of assault to the deceased with lathi to Co-accused Vishal Tiwari.
5. It is also submitted that the postmortem report of the deceased would sufficiently reveal that only one visable injury has been found on his head, thus it is a case of single blow and

having regard to the statement the witness Mamta Tiwari, the same has been inflicted by the co-accused Vishal Tiwari.

6. It is further submitted that even if the case of the prosecution is believed, the death of the deceased may not be linked with the injuries allegedly sustained on 08.06.2023 and it appears that adequate medical treatment was not provided to the deceased and it is account of this he had died after one month of the incident.

7. It is further submitted that the applicant is in jail in this case since 17.7.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

8. Learned A.G.A. on the other hand submits that the applicant is accused of committing heinous offence and specific role of assault has been assigned to all the accused persons and having regard to the fact that the temporal and occipital bones of the deceased was found fractured, the applicant is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is evident that in the FIR as well as in the statements of the prosecution witnesses general role of assault has been assigned to all the accused persons named in the FIR. Witness Mamta Tiwari has attributed specific role of assault with 'lathi' to co-accused Vishal Tiwari. No recovery of any kind has been effected from the applicant or any other accused persons. The death of the deceased has occurred after 30 days of the occurrence. Thus, the role of applicant appears to be distinguishable from the role of Vishal Tiwari to whom specific role of assault with 'lathi' has been assigned. The applicant is in jail in this case since 17.7.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted. His presence may be secured before the trial court by placing adequate conditions.

10. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

11. Let the applicant- **Jatashankar Tiwari** involved in the aforesaid case be released on bail on 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.

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

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

11. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 9.11.2023

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