

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13443 of 2023

Applicant :- Lavkush

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

Counsel for Applicant :- Farooq Ayoob

Counsel for Opposite Party :- G.A., Manmohan Chaurasia, Vimal Kishor Singh

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 the investigation in this case is still pending.

2. Heard Shri Farooq Ayoob, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record. No one is present for the complainant/informant, while the names of Shri Manmohan Chaurasia and Shri Vimal Kishor Singh are printed in the cause list as learned counsel for the complainant/informant nor any request has been made to adjourn the case.

3. This bail application has been moved by the accused/applicant- **Lavkush** for grant of bail, in Case Crime No. 246 of 2023, under Sections 147, 148, 149, 323, 325, 504, 506 and 304 I.P.C., Police Station Kothi, District Barabanki, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and in fact it was the applicant and his family members who have been assaulted by the informant's party. Attention of this Court in this regard has been drawn to Annexure No.7, which is an F.I.R. lodged by one Dulan Singh (injured person from the side of the applicant) on 23.06.2023 at 14:20 hours against six named accused persons from the side of the informant with the allegations that on relevant date and time on the issue of possession of some immovable property an altercation had taken place and the applicant's party was assaulted by the informant's party, wherein five persons from the side of the applicant got injured.

5. Learned counsel for the applicant has also drawn the attention of this Court towards the injury reports of injured

Jagdish, Sarojini, Lalji, Gokul Prasad and Dulan Singh, who have sustained many lacerated wounds and it is vehemently submitted that since it is a matter of cross case it may not be ascertained at this stage as to which party was aggressor and the same could only be determined during the course of trial.

6. It is further submitted that six persons are also shown injured from the side of the informant and one person is shown to have died. However, the postmortem report of deceased Ram Singh would reveal that no visible or internal injury has been found on his person and his cause of death has not been ascertained and viscera has been preserved for chemical analysis. Thus, the death of Ram Singh could not be related with any injury and the applicant may never be an accused under Section 304 I.P.C.

7. It is next submitted that applicant is languishing in jail in this case since 02.08.2023. No specific role has been assigned to the applicant and he is not having any criminal history. Identically placed co-accused persons, namely, Sarojini as well as Jagdeesh and Manoj have been granted bail by this Court, vide order dated 25.08.2023 and 06.11.2023 passed in Criminal Misc. Bail Application No. 10657 of 2023 and 12423 of 2023, respectively. There is no apprehension that after being released on bail she may flee from the course of law or may otherwise misuse the liberty.

8. 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.

9. Having heard learned counsel for the parties and having perused the record, it is evident that cross F.I.R.s have been lodged by the parties against each other pertaining to the incident which had occurred on 23.06.2023. Six persons have been injured from the side of the informant and one person, namely, Ram Singh is allegedly done to death while from the side of the applicant, five persons have sustained injuries. Perusal of the postmortem report pertaining to the deceased Ram Singh would reveal that no visible or internal injury has been found by the doctor, who has conducted the postmortem on his dead body and the cause of death has not been ascertained and viscera has been preserved. Admittedly the case of the prosecution is not to the tune that the deceased has been done to death by administering some poisonous substance and the straight case of the prosecution is that, it is on account of the assault given by the applicant and his associates the deceased has lost his life. It is vehemently submitted on behalf of the applicant that in absence of any visible or internal injury and

having regard to the fact that cause of death has not been ascertained, the applicant may never be an accused under Section 304 I.P.C. Many persons have been injured from both sides. The aggressor may only be determined during the course of trial. Identically placed co-accused persons, namely, Sarojini as well as Jagdeesh and Manoj have been granted bail by this Court. Applicant is languishing in jail in this case since 02.08.2023 without any criminal antecedents and the presence of the applicant 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 of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

11. Let the accused/applicant- **Lavkush** 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 cooperate in the investigation.**

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) 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.

14. 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