

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13592 of 2023

Applicant :- Sahil Khan @ Tinni @ Shahbaj

Opposite Party :- State Of U.P Thru. Addl.Chief Secy. Home Civil Sectr. Lko.

Counsel for Applicant :- Durgesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Suresh Kumar Yadav, 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- **Sahil Khan @ Tinni @ Shahbaj** for grant of bail, in Case Crime No.1345 of 2022, under Sections 323, 504, 506, 302, 34 I.P.C., Police Station Kotwali, District Barabanki, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that F.I.R. of this case has been lodged by the brother of the deceased against the applicant and other co-accused persons, wherein role of assaulting the deceased with knife has been assigned to the co-accused Aman and the role of catching hold has been assigned to the applicant.

5. It is also submitted that during the course of investigation the investigating officer has recorded the statement of many witnesses including Farhan and Shadab and all these witnesses in one voice have stated that the assault with knife was given by the co-accused Aman on the exhortation given by applicant-Sahil Khan. Thus, the role of only exhortation has been assigned to the applicant.

6. It is further submitted that only one incised wound has been found in the postmortem report of the deceased and the story of the prosecution that before the assault given by the co-accused Aman, there was a fight going on is negated by the postmortem report wherein no injury of any kind has been found on the person of the deceased.

7. It is next submitted that applicant is in jail in this case since 13.06.2023 and criminal history of one case, which is of minor in nature, has been explained and the applicant has been granted bail therein. Charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty. Similarly placed co-accused persons, namely, Mohammad Zaid has been granted bail by this Court, vide order dated 10.08.2023 passed in Crl. Misc. Bail Application No. 4817 of 2023.

8. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that a young boy has been done to death by the applicant and his associates and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

9. Having heard learned counsel for the parties and having perused the record, it is evident that the first informant of this case is not an eye witness. The statements of the eye witnesses recorded by the investigating officer namely Farhan, Mohd. Shadab, Rehan, Mohd. Rizwan, would sufficiently demonstrate that the incident had occurred in two parts, at first a quarrel has taken place in front of the Gupta Hotel, however, the owner of the hotel namely Rajesh Gupta asked the accused persons to stay away from the hotel on which the accused persons as well as the deceased had gone to a little distance, however, the main accused namely Aman and his associates again caught hold of the deceased and on the exhortation given by applicant- Sahil Khan, co-accused Aman assaulted the deceased with knife. The knife has also been recovered on the pointing of the co-accused Aman. Thus the role of only giving of exhortation has been assigned to the instant applicant and no injury of any kind except one incised wound has been found on the abdominal region of the deceased and cause of death is also ascertained due to shock and hemorrhage as a result of ante mortem injury, which could only be attributed to the co-accused Aman. Thus the role of the instant applicant is distinguishable from the role of main accused Aman. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 13.06.2023 and he is not having any criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

10. Having regard to the overall facts and circumstances of the case and 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- **Sahil Khan @ Tinni @ Shahbaj** 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 for a period of one year, which will start from 1st of September, 2023, shall appear before the Station House Officer, Police Station Kotwali Nagar, Barabanki on fortnightly basis i.e. once in two weeks and would also provide his mobile phone number to the Station House Officer concerned and would not change the same without prior intimation of him.

(ii) The applicant shall also inform the Station House Officer concerned of his departure from the city as well as of his arrival.

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

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

(v) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

12. It is further provided that in case of involvement of the applicant in any subsequent offence, the trial court would be at liberty to cancel the facility of bail granted by this Court.

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

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

15. 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 of this Court on the merits of the case.

Order Date :- 21.12.2023

Muk