

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13779 of 2023

Applicant :- Shivam

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

Counsel for Applicant :- Rajesh Kumar Awasthi

Counsel for Opposite Party :- G.A.

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 charge sheet in this case has also been submitted.
2. Heard 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- **Shivam** for grant of bail, in Case Crime No. 86 of 2022, under Sections 304, 323, 504 and 34 I.P.C., Police Station Sammanpur, District Ambedkar Nagar, 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 he has not committed any offence as claimed by the prosecution.
5. It is further submitted that the applicant was not named in the F.I.R., as the F.I.R. has been lodged against one who is shown to be the brother of the groom and some other unknown persons and allegations have been levelled that certain persons who have arrived in the village with 'barat' had assaulted the brother of the informant resulting in his death.
6. It is vehemently submitted that the star witness of this crime is injured Rakesh and his statement was recorded soon after the lodging of the first information report and he has not named the applicant as one of the assailants and the charge sheet after investigation could only be filed against brother of the groom, namely, Sudeep and Govind Kumar and after many days of filing the charge sheet against the above-mentioned accused persons the investigating officer appears to have recorded the statement of three more witnesses, namely, Rajeev, Roopkumari and Sangeeta, wherein they have taken the name of the instant

applicant along with the other assailants and on this score the charge sheet against the applicant is also filed.

7. Elaborating further, it is submitted that statement of prosecution witnesses, namely, Rajeev, Roopkumari and Sangeeta has been recorded on 10.09.2023 while they are the residents of the same village and non-recording of their statements earlier in time throws a cloud of suspicion over the involvement of the applicant and it appears that on persuasion of the informant, the name of the applicant has also been added as an assailant while he was not present at the spot.

8. It is further submitted that co-accused Sudeep, who was also named in the F.I.R. by the nomenclature of the brother of the groom and the other identically placed co-accused Govind Kumar have been granted bail by a co-ordinate Bench of this Court, vide orders dated 17.07.2023 and 21.07.2023 passed in Criminal Misc. Bail Application No. 9883 of 2022 and 8149 of 2022, respectively. Applicant is languishing in jail in this case since 06.09.2023 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.

9. 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.

10. Perusal of the record in the background of the submissions advanced by learned counsel for the parties would reveal that in the postmortem report of the deceased, three injuries of the nature of 'contusion and laceration' has been found and the cause of death has been ascertained as 'coma' due to 'antemortem injuries'. The applicant was admittedly not named in the F.I.R. Co-accused Sudeep was named therein with the nomenclature of brother of groom, as the '*marpeet/assault*' is shown to have committed by some persons who had arrived in the village with the '*barat*'. The first charge sheet appears to have been filed against Sudeep and Govind Kumar and the investigation was left open for the other unknown persons. After many months of the lodging of the F.I.R. the investigating officer appears to have recorded the statement of witnesses, namely, Rajeev, Roopkumari and Sangeeta, who have implicated the applicant as one of the assailant. Nothing incriminating has been recovered from the possession or on the pointing of the applicant. The named accused Sudeep has been granted bail by a co-ordinate Bench of this Court. Applicant is languishing in jail in this case since 06.09.2023 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.

11. 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**.

12. Let the accused/applicant- **Shivam** 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.

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 on the merits of the case.

Order Date :- 22.11.2023

Praveen