

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13959 of 2023

Applicant :- Ashish Tiwari

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home, Lko.

Counsel for Applicant :- Dharendra Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Personal affidavits filed by Shri Virendra Kumar Pal, Sub-Inspector, Police Line, Ayodhya as well as Shri Yashwant Dwivedi, Sub-Inspector, Police Station-Cant, District Ayodhya, are taken on record. Explanation given by the I.Os is sufficient. Their personal appearance is exempted.

2. Heard Shri Dharendra Pratap Singh, learned counsel for the applicant as well as learned A.G.A for the State and perused record.

3. The present bail application has been filed seeking release of the applicant **Ashish Tiwari**, on bail in Case Crime No. 302 of 2023 under Sections 304 I.P.C, Police Station- Cantt, District Faizabad/Ayodhya.

4. Learned counsel for the applicant submitted that the son of the deceased lodged the First Information Report wherein it is mentioned that his father was a mechanic who worked along with the applicant (Ashish Tiwari) and co-accused Munnu, who were also a mechanic. The allegation of theft of Twenty Thousand Rupees has been levelled against the deceased and it is further mentioned that they both had beaten his father due to which he sustained injuries and died. Learned counsel for applicant further submitted that admittedly, the complainant is not the eye witness of the case and his case is based on surmises and conjectures and there is no basis as to how he came to know about the theft/dispute of Twenty Thousand Rupees.

5. Learned counsel for applicant has further drawn attention of the Court towards the statement of Paras Nath Yadav, who has mentioned that the injured was lying in front of his shop and he told that his brother may be informed and thereafter his elder brother was informed by the Principal of R.L International Academy. The brother of the deceased came to the place of occurrence, thereafter the deceased was medically treated, however, he died. Learned counsel for applicant further stated that neither Paras Nath Yadav, nor any other person has named the applicant nor anyone has seen the said incident and there is no eye witness of the said incident and the applicant

cannot be held responsible in any manner.

6. Learned counsel for applicant lastly submitted that there is no previous criminal history of the applicant and he is languishing in jail since 28.08.2023.

7. On the other hand, learned A.G.A. has opposed the prayer of bail and has submitted that on the basis of information received, the Investigating Officer has filed charge-sheet, and it is further stated that the applicant is named in the F.I.R and the deceased died due to injury sustained by him in the altercation, therefore, the applicant is not entitled for bail and his bail is liable to be rejected.

8. Considering over all facts and circumstances of the case, the material available on record, contents of F.I.R., other relevant documents, nature of offence, the argument that there is not eye witness of the case, the argument that version of the First Information Report has become doubtful because complainant has not mentioned as to how he came to know that there was any altercation between the father of the complainant (deceased) and the applicant, I find it to be a fit case for bail.

9. Accordingly, the bail application is **allowed**.

10. Let the applicant, **Ashish Tiwari** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under

Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

11. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 14.12.2023

DiVYa