

**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 14051 of 2023

**Applicant :-** Smt. Nikku

**Opposite Party :-** State Of U.P. Thru. Its Prin. Secy. Deptt. Of Home, Civil Secrt. Lko.

**Counsel for Applicant :-** Alok Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Brij Raj Singh,J.**

1. Heard learned counsel for the applicant and Sri M.V.S. Chauhan, learned A.G.A. for the State.

2. The present bail application has been filed by the applicant with a prayer to enlarge her on bail in Case Crime No.135 of 2023 under sections 323, 504 & 304 IPC, Police Station Karaundikala, District Sultanpur.

3. It has been submitted by learned counsel for the applicant that the complainant/Smt. Manbhawati Devi lodged an FIR in which she has stated that on 08.07.2023 at about 05.00 at the evening there was dispute between the parties for dumping the garbage and the applicant had beaten the complainant and on alarm raised by her and father-in-law Kehtau came to the place of occurrence. He was also assaulted by the applicant due to which injury was caused to him and he was taken to the hospital where he died.

4. Learned counsel for the applicant has invited attention of this Court towards the statement of the complainant recorded under section 161 Cr.P.C. in which she has mentioned that while quarrel took place, her father-in-law came to the place of occurrence and he was pushed by the applicant on the floor due to which he received injuries on his head. Learned counsel for the applicant has further submitted that it is cross case because applicant had also received serious injuries. The complainant and the deceased had also beaten the applicant due to which injuries were caused to her. The applicant had also lodged FIR on 08.07.2023 under sections 323, 504 and 506 IPC. Learned counsel for the applicant has also filed medical report which indicates that five injuries have been caused to the applicant and

the same has been filed as Annexure no. 8 to the affidavit filed in support of the bail application. Learned counsel for the applicant has also annexed the photograph which indicates that the blood was found on the floor and she is lying. It has been submitted by learned counsel for the applicant that the applicant is widow lady and other family members do not want to give her share and they used to create problem in the family. He has also submitted that there is no intention to kill the deceased even if version of the FIR is taken on its face value. The deceased is aged about 80 years had received only one injury and died as such at the most the case is falling within the purview of section 304 Part-II IPC. The applicant has no previous criminal history and there is no possibility of fleeing away from the judicial process or tempering with the witnesses and in case, the applicant is enlarged on bail, he shall not misuse the liberty of bail. The applicant is in jail since 09.07.2023.

5. On the other hand, Sri M.V.S. Chauhan, learned A.G.A. has opposed the prayer for bail but could not dispute the aforesaid facts.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that there is no change version between the FIR and the statement of the complainant recorded under section 161 Cr.P.C., the argument that there is no intention to kill the deceased and the argument that it is a cross case and the applicant had also received 5 injuries, therefore, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, namely, **Smt. Nikku**, be released on bail in the above case crime number on her 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 she 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 her

counsel. In case of her absence, without sufficient cause, the trial court may proceed against her 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 her 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 her, 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 her in accordance with law.

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 :- 29.11.2023**

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