

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 14558 of 2023

**Applicant :-** Shyama Devi

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

**Counsel for Applicant :-** Saurabh Upadhyay, Abhishek Awasthi

**Counsel for Opposite Party :-** G.A., Ram Suphal

**Hon'ble Mohd. Faiz Alam Khan, J.**

1. Counter affidavit filed by the State is taken on record.
2. Heard Shri Saurabh Upadhyay, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Ram Suphal, learned counsel appearing for the opposite party no.2/complainant and perused the record.
3. This bail application has been moved by the accused/applicant- **Shyama Devi** for grant of bail, in Case Crime No.178 of 2023, under Sections 147, 323, 504, 336, 302 I.P.C., Police Station Malipur, 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 she has not committed any offence as claimed by the prosecution.
5. It is further submitted that in the F.I.R., which has been lodged by one Saroj Devi, general role of assault with lathi-danda and bricks has been assigned to all the accused persons and no specific or overt act has been attributed to the instant applicant. It is also submitted that during the course of investigation, statements of various witnesses have been recorded by the investigating officer, from where it may be inferred that the role of assaulting the deceased with bricks (Gumma) has been assigned to the instant applicant, however, in the postmortem report of the deceased, no visible injury has been found on the person of the deceased nor any internal injury has been noticed, which may be attributed to the applicant as the cause of death could not be ascertained and viscera of the deceased was preserved.
6. It is further submitted that the applicant is a lady and is aged

about 72 years and is detained in prison since 18.09.2023, charge-sheet in this case has already been submitted and the applicant is not carrying any criminal history. 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 and since the case of the prosecution *prima facie* appears to be not genuine or truthful, the applicant is entitled to be released on bail.

7. 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 having regard to the material/evidence available against the applicant, she is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant with regard to the fact that no injury of any kind has been noticed on the person of the deceased in the postmortem report.

8. Shri Ram Suphal, learned counsel appearing for the opposite party no.2/complainant vehemently opposes the prayer of bail of the applicant on the ground that a young boy has been done to death by the concerted efforts of the applicant and other accused persons. It is also submitted that yet viscera report has not been prepared and having regard to the role played by the applicant, she 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 the case of the prosecution is to the tune that on the fateful day, when the deceased was returning to his home, he was assaulted by the applicant and other accused persons named in the F.I.R. with the help of lathi/danda as well as by bricks. Interestingly, in the postmortem report of the deceased, no external or internal injury has been found on the person of the deceased and cause of death could not be ascertained and viscera was preserved. The defence of the applicant appears to be that specific case of the prosecution is of assault with lathi-danda and bricks and it is not a case of the prosecution that the deceased has been done to death by administration of some poisonous substance and in this background it has been submitted by learned counsel for the applicant that *prima facie* case of the prosecution is false as the medical evidence is in direct contrast with the oral evidence. Charge-sheet in this case has already been filed. Applicant is a lady and is in jail in this case since 18.09.2023 without any previous 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- **Shyama Devi** involved in above-mentioned case, be released on bail on her 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.

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 of this Court on the merits of the case.

**Order Date :- 19.12.2023**

Anupam S/-