

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15096 of 2023

Applicant :- Rampal

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

Counsel for Applicant :- Satendra Kumar (Singh), Abhishek Misra, Durgesh Nandini

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard Shri Satendra Kumar (Singh), learned counsel for the accused-applicant as well as Ms. Priyanka Pamdey, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Rampal** on bail, who is involved in Case Crime No. 448 of 2023 under Sections 304 I.P.C, Police Station- Fardhan, District Kheeri.

3. Learned counsel for the applicant submitted that initially the First Information Report has been lodged under Section 304-A on 20.09.2023, wherein it is stated by the complainant that the deceased while coming from his field, reached to the field of the applicant which was fenced with thorny electric wire and because the field was surrounded by the wire and electric current was flowing through it, as soon as the deceased accidentally touched the wire, he received electric shock and died. Learned counsel for applicant further submitted that initially the F.I.R was lodged under Section 304-A, which was later converted to Section 304 I.P.C as there is absence of mens rea (intention to kill the deceased). He further submitted that the post-mortem report indicates that there was electric burn injury on the person of the deceased. He further submitted that the co-accused (son of applicant) has already been granted Anticipatory bail vide order dated 22.11.2023, by the Court below.

4. Learned counsel for the applicant further submitted that the applicant being a 70 years' old person was apprehended by the police and was sent to jail. He further submitted that the applicant suffers from various ailments and is an old person, therefore, he may be extended the benefit of Section 437 Cr.P.C. He further stated that there is no previous criminal history of the applicant and he is languishing in jail since 29.11.2023.

5. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that the name of the applicant has been mentioned in the *khatauni* of the said field, which

was fenced with electric wire and electric current was flowing through it and due to the negligence of the applicant, the deceased electric shock due to which he died, therefore, bail is liable to be rejected.

6. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that at the most, it is a case of negligence, the argument that the First Information Report was lodged under Section 304-A I.P.C which was later on converted into Section 304 I.P.C and there is absence of mens rea, I find it to be a fit case for grant of bail.

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

8. Let the applicant **Rampal** 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 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 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.

9. 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 :- 20.12.2023

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