

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15101 of 2023

Applicant :- Shailendra Kumar

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

Counsel for Applicant :- Sandhya Devi, Babita Singh, Neha Chaurasia

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 upto date case diary of the case.
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- **Shailendra Kumar** for grant of bail, in Case Crime No.422 of 2023, under Sections 323, 304 I.P.C., Police Station Bilgram, District Hardoi, 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 general role of assault with lathi-danda has been assigned in the F.I.R. as well as in the statement of prosecution witnesses to all the accused persons named in the F.I.R. except an overt act of assaulting with an axe/kulhari has been assigned to co-accused Chandrika.
6. It is vehemently submitted on behalf of the applicant that since general role of assault with lathi-danda has been assigned to all the accused persons named in the F.I.R., except co-accused Chandrika to whom the role of assault on the head of deceased has been attributed and only one injury of the nature of lacerated wound has been found on the head of the deceased and at this stage, it could not be ascertained as to who from amongst three remaining accused persons was the author of the fatal injuries sustained by the informant.

7. It is further submitted that the statement of the informant was also recorded by the investigating officer under Section 161 Cr.P.C., wherein he has assigned specific role of assault on the head of the deceased with an axe/Kulhari to co-accused Chandrika and in this regard, statement of the mother of the informant namely Sirdara is also highlighted in order to show that specific role of assault on the head of the deceased has been assigned to co-accused Chandrika and the role of only standing at the spot has been assigned to the instant applicant.

8. It is also submitted that nothing incriminating has been recovered either from the possession or on the pointing of the applicant and even if the case of the prosecution is taken as it is, a scuffle/fight has started suddenly without there being any premeditation and thus common intention could not be attributed to the applicant as far as causing of death of the deceased is concerned.

9. It is next submitted that applicant is in jail in this case since 19.09.2023 and he is not having any criminal history, charge-sheet in this case has already been submitted and 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.

10. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence as a person has been done to death by the applicant and the informant was also assaulted and he has also sustained grievous injuries and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

11. Having heard learned counsel for the parties and having perused the record, it is evident that in the F.I.R. except co-accused Chandrika to whom role of assault with an axe/kulhari has been assigned, general role of assault with lathi-danda has been assigned to rest of the accused persons including the applicant. The deceased admittedly has sustained one injury of the nature of lacerated wound on his head beneath which hematoma has also been found and the cause of death has been ascertained due to coma as a result of ante mortem head injury. In the statement of the informant and mother of the informant recorded under Section 161 Cr.P.C., they have attributed the role of assaulting the deceased on his head with an axe to co-accused Chandrika. The informant has also been sustained grievous injuries on his left hand and the bone of that hand has also been found fractured, however, it is submitted with considerable force that at this stage, it could not be ascertained

as to who from amongst the accused persons was the author of this fatal injury. The fight as per allegation levelled in the F.I.R., appears to have started all of sudden on a trivial issue and in this regard, it is submitted that there was no time for formation of common intention. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 19.09.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. 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**.

13. Let the accused/applicant- **Shailendra Kumar** 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.

14. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

15. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

16. 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 :- 20.12.2023

Anupam S/-