

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12754 of 2023

Applicant :- Chhotey Lal

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

Counsel for Applicant :- Alok Srivastava, Sharad Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant and Sri Ravish Chandra Mishra, learned A.G.A. for the State.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.202 of 2023, under Sections 302,323 IPC, Police Station Bangarmau, District Unnao.

3. It has been submitted by learned counsel for the applicant that the complainant/ wife of the deceased lodged FIR in which he has mentioned that the applicant and the other three accused came to her house and there was altercation with her son and husband, who was ill. The FIR further indicates that she has expressed her doubt that her husband was beaten with fist by the applicant and other three co-accused, he was brought to Community Health Center and thereafter he was referred to District Hospital where he died. Learned counsel for the applicant has submitted that in the statement of the complainant recorded under section 161 Cr. P.C. she improved her version and she has stated that all the four co-accused armed with sticks came to her house and assaulted her husband. However, in the statement of injured Reetu recorded under section 161 Cr.P.C., she has stated that Anil and Daya Ram assaulted the deceased with stick. Similarly, it has been pointed out that Ram Khelawan, independent witness has also assigned the specific role to co-accused Anil and Daya Ram, who assaulted the deceased with stick. Learned counsel for the applicant has submitted in the statements of injured Reetu as well as Ram Khelawan, the applicant has not been assigned role of assault. The postmortem report also indicates that the injuries which could have been caused by stick. Learned counsel for the applicant has

submitted that there is no role assigned to the applicant in the statement of injured Reetu and Ram Khelawan, therefore, the case of the applicant is distinguishable to other co-accused. 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 18.06.2023.

4. On the other hand, learned A.G.A. has opposed the prayer for bail and he has submitted that the applicant was in drunk state and he came to the house of the deceased thereafter altercation took place and he was present at the place of occurrence. The complainant had mentioned in the statement recorded under section 161 Cr.P.C. that the applicant and other three co-accused assaulted the deceased with sticks, therefore, the bail application of the applicant is liable to be rejected.

5. 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 in the statement of injured Reetu and Ram Khelawan, an independent witness the specific role has been assigned to Anil and Daya Ram and no specific role has been assigned to the applicant, therefore, I am of the opinion that the applicant is entitled to be released on bail.

6. Let the applicant, namely, **Chhotey Lal**, 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.

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 :- 31.10.2023

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