

Court No. - 12

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7669 of 2022

Applicant :- Shivam Dubey S/O Sri Sushil Dubey

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

Counsel for Applicant :- Arun Sinha, Ram Chandra Singh, Umang Agarwal

Counsel for Opposite Party :- G.A., Ramesh Kumar Yadav

Hon'ble Pankaj Bhatia, J.

1. Heard Sri Arun Sinha, learned counsel for the applicant as well as learned A.G.A. and Sri Ramesh Kumar Yadav, learned Counsel for the complainant and perused the record.

2. The applicant seeks enlargement on bail in FIR No.249 of 2021, under Sections 147, 148, 149, 302, 504, 506 IPC, Police Station Dhanpatganj, District Sultanpur.

3. In terms of the FIR lodged on 17.10.2021 at about 06:46 PM, it was alleged that 7 named accused persons and two others, who were not named, came on 16.10.2021 at about 5:30 PM, when the son of the informant and the daughter-in-law were working in the field, the said accused persons started hitting the son of the informant and attacked constantly at the instance of the accused Ashish Yadav. It was also alleged that the accused Ashish Yadav along with the applicant started hitting the son of the informant with the use of *Lathi-Danda*, Iron Rod, Chain etc and on account of such beating, the son of the informant received substantial injuries. Subsequently, the victim was taken to Faizabad hospital where he died on account of the grievous injuries sustained by him.

4. In the light of the aforesaid allegations, the submission of the counsel for the applicant is that at the first instance, as many as, 16 injuries were noticed on the body of the deceased. He further argues that out of the said injuries, one of the injuries being Injury No.5 was on the vital part of the body i.e. on head and parietal region. The counsel for the applicant further argues that the inquest report was prepared on 17.10.2021 at 12:30 in the afternoon, which is the date prior in point of time of the lodging of FIR. He further draws my attention to the postmortem report, which was conducted on 17.10.2021 at about 3:00 PM, which is also the date prior in point of time of the lodging of FIR. He draws my attention to the injury report noticed in the

postmortem report, which are as many as 12 injuries. Out of the said injuries, the Injury No.7, which was also the cause of death, was in the right side of the face and head in temporal and parietal region.

5. The Counsel for the applicant further argues that subsequently in the statement under Section 161 of Cr.P.C., the informant stated that on the date in question, Ashish Yadav was hitting the son of the informant with the use of *Lathi-Danda* whereas one of the co-accused Chinae @ Jitendra was hitting with Iron Rod and the co-accused Deepak carrying country made pistol was also hitting the son with the use of *Danda*. It was also alleged that the applicant along with other co-accused were hitting the son of the informant with the use of *Danda* and as against Shibbu Shekhar Raidas, who was carrying Iron Rod, was hitting the deceased with Iron Rod.

6. In the light of the aforesaid statement, it is argued by the Counsel for the applicant that as the FIR in question is ante timed FIR and was registered after the inquest and postmortem was done. He further argues that in terms of the FIR as well as in terms of the statement of the informant, *prima facie*, the role of carrying and hitting with *Lathi-Danda* was assigned to the applicant, which was general in nature without linking him with the specific injury, which was the cause of death. He further argues that out of the total 47 witnesses, only one of the witness has been examined so far and thus, there is no likelihood of the trial being concluded in near future. The applicant has no criminal antecedents and is in custody since 30.10.2021, as such, the applicant should be enlarged on bail. The Counsel for the applicant also draws my attention to the criminal history of the deceased as disclosed in para 53 of the bail application.

7. Learned A.G.A. as well as learned Counsel for the complainant strongly opposed the bail prayer by arguing that a gruesome murder was committed by the accused named in the FIR along with others with common intention. It is argued that the *Danda* allegedly used in the offence in question was recovered at the instance and pointing out of the applicant. It is further argued that the bail application of one Shibbu Shekhar Raidas was rejected by this Court vide order dated 20.10.2022 passed in Criminal Misc. Bail Application No.12086 of 2022. It is further argued that considering the fact that the offence was committed by all the accused persons at a public place and also looking to the injuries received by the deceased, the bail application should be rejected.

8. As regards the submission of the Counsel for the applicant that the FIR was lodged after the inquest and the postmortem

was done, it is argued that on account of there being a dispute with regard to the jurisdiction, there was a slight variance in lodging of the FIR, to which, the applicant cannot claim the benefits as the incident took place near the border of two districts.

9. It is argued by the Counsel for the informant that the informant is aged about 75 years and she wants that the trial should be concluded in near future. It is further argued that merely because the deceased had criminal antecedents, the applicant as well as the other accused persons had no right to take law on their hands and commit an offence of the nature, which has been done. It is, however, admitted at the bar that out of the total 47 witnesses proposed to be examined, only one witness has been examined so far. It is further argued that the applicant and the other co-accused persons are not co-operating with the trial.

10. Considering the submissions made at the bar, *prima facie*, what transpires is that the FIR was registered alleging that all the accused persons including the applicant had badly beaten the deceased with the use of Iron Rod, *Lathi-Danda* etc., which ultimately resulted into his death. The postmortem report as well as the medical report on record indicate as many as 12 injuries sustained by the deceased prior to his death. In the statement under Section 161 of Cr.P.C., the applicant was assigned the role of beating with *Danda*. Considering the said statement, *prima facie*, general role of beating is assigned to all the accused persons including the applicant, however, from the postmortem report, the cause of death appears to be one of the injuries, which is Injury No.7 in the postmortem report, there is no specific allegation against the applicant of causing injuries which resulted into the death. The applicant is in custody since 30.10.2021 and has no criminal antecedents and also considering the steady pace in which the trial is proceeding, there is no likelihood of the trial being concluded in near future coupled with the fact that there is nothing on record to demonstrate that the applicant if enlarged on bail, would in any way adversely affect the trial.

11. It is also necessary to mention that the bail application of one of the accused Shibbu Shekhar Raidas was rejected on 20.10.2022, however, from the said accused allegedly Iron Rod was recovered and he was assigned the role of beating with Iron Rod whereas against the applicant it was alleged that he was using *Lathi-Danda*, thus, there is a slight distinction.

12. Considering the long incarceration and the reasons recorded above, I am of the view that the applicant is entitled to be

released on bail. Accordingly, the bail application is ***allowed***.

13. Let the applicant Shivam Dubey be released on bail in the abovesaid first information report number on his furnishing personal bonds and two reliable sureties of Rs.25,000/- each to the satisfaction of the court concerned with the following conditions:

(a) The applicant shall execute a bond to undertake to attend the hearings;

(b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

14. However, it is directed that the trial court shall proceed to conclude the trial with all expedition by recording the evidence on day to day basis without giving any unnecessary adjournments to either of the parties preferably within a period of one year.

Order Date :- 31.1.2024
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