

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5385 of 2023

Applicant :- Fajal And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Rakesh Pati Tiwari, Birendra Singh

Counsel for Opposite Party :- G.A., Bal Mukund Singh, Surya Dev

Hon'ble Sameer Jain, J.

1. None appeared on behalf of the informant even in the revised call. However, learned AGA for the State-respondent is present.
2. Heard Ms. Swati Singh Advocate holding brief of Sri Birendra Singh, learned counsel for the applicants and Dr. S. B. Maurya, learned AGA-I for the State-respondent.
3. The instant application has been filed seeking release of the applicants on bail in Case Crime No. 291 of 2022, under Section 302 IPC, Police Station Sheeshgarh, District Bareilly, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicants and five others and according to the FIR, son of the informant was having love affair with the daughter of the co-accused Israr and on 2.9.2022 through audio and photograph which was posted on the whatsapp group, it was revealed that Israr and co-accused Abrar Ahmad and Sarfaraz Ahmad were making assault upon his son.
5. It is further mentioned in the FIR that applicants alongwith the other accused persons including Israr after committing the murder of son of the informant hanged him on the tree and on 3rd September, 2022 in the morning his dead body was found.
6. Learned counsel for the applicants submitted that the entire allegations made against the applicants are totally false and admittedly it is a case of circumstantial evidence and nobody could saw the real incident.
7. She further submitted that even from the perusal of the FIR, it appears that applicants were not having any direct motive to commit the murder of the deceased and only being the cousin brother of the co-accused Israr, they have been made accused in the present matter.
8. She further submitted that although as per allegation applicants and others after committing the murder of the deceased hanged

him on the tree but post mortem of the deceased completely belies the prosecution case and according to the autopsy report of the deceased, he died due to hanging and his hyoid bone was also found intact, therefore, it appears to be a case of suicide.

9. She further submitted that applicants are having no criminal history and he is in jail in the present matter since 12.9.2022.

10. Per contra, learned AGA opposed the prayer for bail but could not dispute the arguments on facts advanced by learned counsel for the applicant.

11. I have heard learned counsel for the parties and perused the record of the case.

12. Considering the fact that as per post mortem report deceased died due to hanging and his hyoid bone was found intact and there is no eye witness account and applicants are having no criminal history and they are in jail in the present matter since 12.9.2022 i.e. for more than a year, in my view, applicants are entitled to be released on bail.

13. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

14. Let the applicants-**Fajal and Yaseen**, be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicants shall appear before the trial court on the dates fixed, unless their personal presence is exempted.

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

(iii) The applicants shall not indulge in any criminal and anti-social activity.

15. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicants.

16. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 1.11.2023

Ankita