

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5471 of 2023

Applicant :- Aman

Opposite Party :- State of U.P.

Counsel for Applicant :- Ayub Khan,Dileep Kumar Shukla

Counsel for Opposite Party :- G.A.,Vijay Prakash Mishra

Hon'ble Sameer Jain,J.

1. Heard Sri Sandeep Kumar Shukla, Advocate, holding brief of Sri D.K. Shukla, Sri Digvijay Tiwari, Advocate, holding brief of Sri V.P. Mishra, learned counsel for the informant and Sri Jhamman Ram, learned A.G.A. for the State.

2. The instant bail application has been filed on behalf of the applicant seeking release on bail in Case Crime No. 393 of 2022 under section 302, 201 IPC, Police Station Madhuban, Bapudham, District Ghaziabad.

3. FIR of the present case was lodged against co-accused Shalu, Sonia and one unknown person and according to the FIR, relationship of the son of the applicant was not cordial with his wife and daughter as wife of the son of the informant was having illicit relationship with some other person and due to this reason, in the intervening night of 3-4 September, 2022, co-accused Shalu i.e. wife of the deceased and Sonia i.e. daughter of the deceased committed murder of son of the informant with the help of an unknown associate.

4. Learned counsel for the applicant submits, applicant was not named in the FIR and statement of the son of the deceased Sonu was recorded by the investigating officer after 42 days of the incident in which, he disclosed the name of the applicant and stated that in the night of the incident when after hearing some noise he woke up then found that applicant was also present along with his mother and sister and his father sustained injuries and, thereafter, all the accused persons including the applicant has taken his father and subsequently, he came to know that his father died.

5. He further submits that statement of Sonu was recorded after 42 days of the incident, therefore, no reliance could be placed upon it and further, witness Sonu, when appeared before the trial, did not support the prosecution case and was declared hostile. He further submits that after the statement of witness Sonu, no evidence against the applicant remains left.

6. He next argued, applicant is having no previous criminal history and he is in jail since 8/11/2022 i.e. for almost a year.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submit that the witness Sonu is hardly 12 years of age and, therefore, if under the pressure of his mother and sister he turned hostile then also merely on this basis, the applicant should not be released on bail.

8. Learned counsel for the informant further submits that if statement of Sonu was recorded after 42 days of the incident by the investigating officer then there is no fault either of the informant or the witness Sonu and due to negligence of the investigating officer, no benefit should be extended to the applicant and, therefore, considering the totality of the facts and circumstances, the applicant should not be released on bail.

9. I have heard all sides and perused the record of the case.

10. From perusal of the record, it reflects that it is a case of circumstantial evidence and name of the applicant was surfaced in the present matter from the statement of witness Sonu i.e son of the deceased after 42 days of the incident and although he stated that at the time of the incident he witnessed that applicant was present in the room along with his mother and sister, the other co-accused persons, and all the three had taken his father but the fact remains that his statement was recorded after 42 days of the incident and no explanation has been given by the prosecution in this regard.

11. Further, it appears that during trial Sonu i.e. son of the diseased has turned hostile. Although the arguments advanced by learned counsel for the informant cannot be completely brushed aside but the fact remains that during trial Sonu did not support the prosecution case and has been declared hostile and in the present matter, except the statement of Sonu there was no cogent evidence

is available against the applicant.

12. Further, applicant is having no previous criminal history and he is in jail for almost a year.

13. Therefore, considering the facts and circumstances of the case as discussed above, in my view, the applicant is entitled to be enlarged on bail.

14. Let the applicant **Aman** 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 applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

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

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

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 :- 17.10.2023

Madhurima