

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6451 of 2023

Applicant :- Raju

Opposite Party :- State of U.P.

Counsel for Applicant :- Ankit Mishra, Gaya Prasad Mishra, Pankaj Bharti, Saurabh Kumar

Counsel for Opposite Party :- G.A., Alok Singh

Hon'ble Sameer Jain, J.

1. Counter affidavit filed today on behalf of the informant is taken on record.
2. Heard Sri Pankaj Bharti, learned counsel for the applicant, Sri Alok Singh, learned counsel for the informant and Sri Santosh Nigam, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 781 of 2022, under Sections 302, 201 IPC, Police Station Tajganj, District Agra during pendency of the trial.
4. FIR of the present case was lodged against co-accused Ashneet and his unknown associates and according to the FIR on 05.10.2022 at about 10.00 AM in the morning nominated accused Ashneet along with his two associates has taken the brother of the informant and thereafter in the evening at about 8.00 PM Ashneet informed the informant that due to over intoxication his brother is not in the position to move and when informant after receiving information arrived at spot then he after taking wallet and mobile of his brother returned and on 06.10.2022 at about 7.30 AM in the morning his brother was found in fainted state and when he was taken to the hospital then doctor declared him dead.
5. Learned counsel for the applicant submitted that it is a strange case, in which, even after receiving information that due to over intoxication deceased could not even move informant i.e. his brother did not take him to home and only has taken his wallet and mobile and next day he has taken him to the hospital where deceased was declared dead. He further submits that FIR of the

present case was lodged on 12.10.2022 i.e. after six days and FIR was lodged after inquest and post mortem and at the time of inquest first informant was present and he was also one of the punch witness.

6. He further submits that although applicant was not named in the FIR but when the statement of the informant was recorded under Section 161 Cr.PC. on 12.10.2022 then he disclosed the name of applicant and co-accused Bobby Kushwaha along with nominate accused Ashneet and stated that all the three had taken the deceased from his house and this fact clearly suggests that subsequently on the basis of false allegation applicant has been made accused in the present matter.

7. He further submits that applicant never took the deceased from his house and only being friend of nominated accused Ashneet he has been made accused in the present matter. He further submits that during investigation Investigating Officer on 05.12.2022 procured a CCTV footage and according to the CCTV footage applicant, co-accused Bobby Kushwaha and nominated accused Ashneet were disposing the dead body of the deceased by throwing it.

8. He further submits that there is no evidence that applicant committed the murder of the deceased and even if the CCTV footage is accepted then at best applicant can be convicted under Section 201 IPC.

9. He further submits that it is case of circumstantial evidence and there is no motive has been assigned to the applicant and only being friend of nominated accused Ashneet, he has been made accused in the present matter and motive of crime has also not assigned to nominated accused Ashneet. He further submits that bail application of nominated accused Ashneet has already been allowed by this Court but at the time of allowing the bail application, the fact of CCTV footage could not be placed before this Court. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 13.10.2022 i.e. almost a year.

10. He further submits that the details of footage of CCTV was noted in the case diary by the Investigating Officer and according to it applicant and other accused persons are visible in the CCTV footage but in fact alleged CCTV footage was blurred and it was not possible to recognize the presence of the applicant in the CCTV footage.

11. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that although applicant was not named in the FIR but his name was surfaced during the statement of the informant recorded under Section 161 Cr.P.C. and apart from the evidence of last seen during investigation when Investigating Officer collected the CCTV footage from the house of one Vijay Kumar then it was revealed that applicant and other accused persons were throwing the dead body of the deceased, therefore, the CCTV footage is a clinching evidence and at this stage it cannot be said that applicant did not participate in the crime and he was not involved in commission of the instant crime.

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

13. It is a case of circumstantial evidence, in which, applicant was not named in the FIR and his complicity was revealed in the statement of informant recorded under Section 161 Cr.P.C. and as per informant he along with two others has taken the deceased. Further, during investigation on 05.12.2022 when Investigating Officer procured the CCTV footage from the house of one Vijay Kumar then after perusal of the CCTV footage it was found that applicant and co-accused were throwing the dead body of the deceased, therefore, prima facie there is evidence against the applicant and at this stage it cannot be said that applicant did not participate in the instant crime.

14. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail.

15. Accordingly, the instant bail application is rejected.

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 :- 12.10.2023

AK Pandey