

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6944 of 2023

Applicant :- Furkaan Noori

Opposite Party :- State of U.P.

Counsel for Applicant :- Hari Krishna Singh, Dhirendra Kumar
Srivastava

Counsel for Opposite Party :- G.A., Bakhteyar Yusuf

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Dhirendra Kumar Srivastava, learned counsel for the applicant, Sri Bakhteyar Yusuf, learned counsel for the first informant, Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Furkaan Noori, seeking enlargement on bail during trial in connection with Case Crime No.663 of 2022, under Sections 302, 120-B IPC, registered at Police Station Izzatnagar, District Bareilly.
4. The FIR of the matter was lodged on 2.8.2022 by Smt. Dr. Ujama Akhtar against Zoya Akhtar, Salim Sabari, Baistwah Malik Saifi and Baistwah Adnan Aziz alleging therein that her brother Jeeshan Akhtar was married to Zoya Akhtar after talaque with his first wife. On 1.8.2022 her husband received a phone call that her brother is unwell and has been taken to hospital where the doctors have not given any treatment after which he has been shifted to another hospital where he was declared dead.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the applicant is not named in the FIR. His name has surfaced in the matter in the second statement of co-accused Zoya Akhtar recorded under Section 161 Cr.P.C. wherein she has stated that she called Furkaan and Wasim and hatched conspiracy after which she caught-hold of the legs of Jeeshan, Furkaan caught-hold his hands and Wasim strangulated his neck. There is no reliable and cogent evidence to implicate the applicant. The said evidence is inadmissible in evidence inasmuch as it is the confessional statement of co-accused to the police. It is argued that co-accused Wasim has been granted bail by coordinate

Bench of this Court vide order dated 10.8.2023 passed in Criminal Misc. Bail Application No.33367 of 2023, copy of the same produced by learned counsel for the applicant is taken on record. It has also been pointed out that the applicant is not having any criminal history as stated in para 18 of the affidavit. The applicant is in jail since 17.8.2022.

6. Per contra learned counsel for the first informant and learned counsel for the State opposed the prayer for bail and argued that CDR of phone of Zoya Akhtar and Wasim was taken out by the Investigating Officer from which it deciphered that there are frequent long and short calls between them often and even in the night of the incident. The same would go to show that both accused persons were in touch with each other. Co-accused Zoya Akhtar stated that on her request the applicant had arranged to hire of co-accused Wasim who had strangled the neck of deceased, the same is sufficient to show the culpable homicide by the applicant, as such the prayer for bail be rejected.

7. After hearing the counsel for the parties and perusing the record, it is evident that the applicant is not named in the FIR. It is a case of circumstantial in nature. There is no eye-witness to the murder. In so far as evidence against the applicant is concerned, the same is only confessional statement of co-accused Zoya Akhtar to the police during investigation. Co-accused has been granted bail by coordinate Bench of this Court. The applicant has no criminal history.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant-Furkaan Noori, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the

court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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., may be issued and if 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 I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is **allowed**.

(Samit Gopal, J.)

Order Date :- 30.10.2023

Gaurav Kuls