

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11385 of 2023

Applicant :- Amit Maan @ Amit Choudhary

Opposite Party :- State of U.P.

Counsel for Applicant :- Dheeraj Singh (Bohra),Devendra Singh,Narendra Kumar,Pravindra Singh,Sr. Advocate

Counsel for Opposite Party :- G.A.,Ravindra Pratap Singh,Vishal Singh

Hon'ble Dr. Gautam Chowdhary,J.

1. Compliance affidavit filed by learned A.G.A. today in the Court, is taken on record. Heard learned counsel for the applicant, learned A.G.A for the State, learned counsel for the informant and perused the record.

2. The prosecution story in brief is that on 10.02.2021 there was Kuwa (well) Pujan programme at the house of one Anil, who had taken the deceased with him since morning to help him and when the deceased did not return till late hours, the mother and wife of the deceased went to see him, they saw that the deceased was lying over the cot (charpai). The guests were busy in the programme and when the mother and wife of the deceased made query about the condition of the deceased, they did not answer properly, due to which, they returned and after about 15 to 20 minutes, son of the said Anil namely, Kashish and nephew of one Sikha brought the deceased on a bike and dropped him at his house. When no movement was seen in the body of the deceased for about half an hour, they rushed to the hospital, where the deceased was declared dead. Father of the deceased then got lodged the F.I.R. in the present case.

3. Learned counsel for the applicant submits that the applicant was neither named in the F.I.R. nor in the statement of the informant. He further submits that the wife of the deceased namely, Smt. Ritu also did not name the applicant nor assigned any specific role in her statement recorded under Section 161 Cr.P.C. Learned counsel for the applicant has drawn the attention of this Court to the statements of independent witnesses recorded under Section 161 Cr.P.C. who have categorically stated that the deceased was taking liquor since morning and due to over drinking he became unconscious and his condition became deteriorated, on account of which he died. He further submits that neither there is any direct nor indirect evidence against the applicant to demonstrate the complicity of the applicant in the commission of alleged offence except the fact that the applicant was also one of the guests in the programme organised by Anil. It is thus contended that the applicant has been falsely implicated in the present case. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 19.11.2022, having no criminal history.

4. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage. Learned counsel has drawn the attention of this

Court to page no. 92 of the paper book, which is the subsequent statement (Majeed statement) of the informant wherein it has been stated that at the time of incident, some video was also recorded in the mobile of the deceased with respect to programme, wherein it has been seen that one person was having two glass of liquor in his hand and another glass was being handed over by the applicant to the deceased and he is sure that some poisonous substance has been administered in his drink, due to which he died. Learned counsel further argued that in the post mortem report viscera was preserved for histopathology and bio-chemical analysis and viscera report shows that Ethyl Alcohol and Organa Chloro Insecticides poison was found. It is thus contended that the deceased was administered poison in the drink due to which, the deceased died. Thus, the applicant is not entitled to be enlarged on bail.

5. In reply to the contentions advanced by learned A.G.A. as well as learned counsel for the informant, learned counsel for the applicant has drawn the attention of this Court to the statement of the first informant (father), his wife (mother) and his daughter-in-law i.e. wife of deceased, wherein more or less, same version with regard to timing has been stated that when the deceased did not return, the mother of the deceased and his wife went to the house of the host Anil on 10.02.2021 at about 11:15-11:30 P.M and they saw the deceased lying on a cot. He further submits that the video recording shows that one person was having two glass of liquor in his hand whereas, the applicant had one glass, which was given by him to the deceased, thus it appears that the incident is alleged to have taken place between 11:00 P.M. to 11:30 P.M. Learned counsel has not disputed the F.S.L. report but has drawn the attention of this Court to the report of State Medico Legal Cell, copy of which is annexed as Annexure-7 to the affidavit

accompanying the bail application, wherein it has been observed that Organochloro Insecticides is an agricultural poison normally used in suicide and the death would take place in case of consumption of fatal dose for more than 12 hours whereas, in case of consumption of Ethyl Alcohol also, the death may take place in more than 12 hours in case of fatal dose, thus if the deceased was administered poisonous substance in the drink on 10.02.2021 between 11:00 P.M. to 11:30 P.M. then the deceased would have died in the morning of next day i.e. 11.02.2021. Learned counsel has also drawn the attention of this Court to the post mortem report dated 11.02.2021 conducted at about 02:45 P.M. wherein the time since death has been shown as 2/3rd of a day. Thus, it appears that the deceased died at about 11:00 to 11:30 P.M. of 10.02.2021, and therefore, the statements given by the independent witnesses that the deceased was taking liquor since morning and due to over-dose of the liquor, his condition became deteriorated and he died has material bearing. Learned counsel further argued that even if the prosecution story is taken to be true, for the sake of argument, that the deceased was administered poison, then that poison had been given to him in the morning, which matches with the State Medico Legal Cell report that in case of consumption/administering such poison, death would take place after a lapse of 12 hours and if that poison was given to the deceased in the morning then it is not known as to who was the person who administered poison, thus the arguments advanced by learned A.G.A. as well as learned counsel for the informant has no force, ergo the applicant is entitled for bail.

6. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all 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, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

7. Let applicant **Amit Maan @ Amit Choudhary** involved in Case Crime No.190 of 2021 under Sections 302, 34 I.P.C., Police Station Kavi Nagar, District Ghaziabad, be released on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(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.

8. 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 in accordance with law.

9. The bail application is **allowed**.

Order Date :- 12.12.2023

S.Ali