

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 16153 of 2021

Applicant :- Azim

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinod Kumar Tirpathi, Amit Kumar Singh, Jagdev Singh, M J Akhtar, Manoj Kumar Tripathi, Saurabh Tripathi, Shantanu Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Akhilesh Kumar Mishra, Advocate holding brief of Sri Amit Kumar Singh, learned counsel for the applicant and Sri Shatruhan Yadav, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 032 of 2021, under Section 304 IPC, Police Station Noorpur, District Bijnor during pendency of the trial.

3. FIR of the present case was lodged against applicant and one Naseem Ahmad and according to the FIR applicant and co-accused Naseem Ahmad provided carrot Halwa to the brother of the informant and after consuming the same he died during treatment.

4. Learned counsel for the applicant submitted that on the basis of false allegation applicant has been made accused in the present matter and however, during post mortem report cause of death could not be ascertained, therefore, viscera was preserved but now viscera report is on record, which shows that no poison was found. He produced the certified copy of the viscera report during the course of argument, which is taken on record and marked as 'A'.

5. He next submits that applicant is not having any criminal history and in the present matter he is in jail since 02.02.2021 i.e. for more than two years.

6. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that in viscera report no poison was found.

7. I have heard learned counsel for the parties and perused the

record of the case.

8. Considering the fact that cause of death could not be ascertained by the autopsy surgeon and viscera was preserved but as per viscera report, which was produced by learned counsel for the applicant during the course of argument, no poison was found and applicant in the present matter is in jail for more than two years, in my view, applicant is entitled to be released on bail.

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

10. Let the applicant - **Azim** 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.

11. 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 applicant.

12. 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 :- 6.12.2023

AK Pandey