

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14044 of 2023

Applicant :- Waseem

Opposite Party :- State of U.P.

Counsel for Applicant :- Sharad Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Sharad Kumar Singh, learned counsel for the applicant and Sri Devendra Nath Mishra, 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- Waseem, seeking enlargement on bail during trial in connection with Case Crime No. 110 of 2021, under section 302, 201 I.P.C., Police Station Budhana, District Muzaffar Nagar.
4. This is a second bail application. The first bail application of the applicant was rejected vide order dated 10.08.2021 passed by this Court in Criminal Misc. Bail Application No. 27943 of 2021 (Waseem Versus State of U.P.).
5. Learned counsel for the applicant argued that the trial in the present matter has started in which the statements of P.W.-1 Faisal, P.W.-2 Rais Ahmad and P.W.-3 Mahjabi have been recorded in which P.W.-2 and P.W.-3 have been declared hostile by the trial court and P.W.-1 has not supported the prosecution case. It is argued while placing the statement of P.W.-1 that there are contradictions in the statement. It is argued that as such the applicant has been falsely implicated in the present case. It has also been pointed out that the applicant is not having any criminal history as stated in para 20 of the affidavit and is in jail since 04.04.2021.
6. Per contra learned counsel for the State vehemently opposed the prayer for bail and argued that this is second bail application. The first bail application of the applicant has been rejected by this Court on merits by a detail order on 10.08.2021. It is argued that insofar as the statement of the witnesses are concerned the same should be appreciated by the trial court at the appropriate stage. It is argued that there is no fresh and new ground, the bail application be thus rejected.
7. After hearing the counsel for the parties and perusing the record, it is apparent that this is second bail application. The first bail application of the applicant has

been rejected by this Court on merits by a detail order on 10.08.2021. The said order reads as under:-

"Heard Ms. Nasira Adil, learned counsel for the applicant, Sri Madhava Nand Shukla, learned counsel for the first informant, Sri Sanjay Singh, learned counsel for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Waseem, seeking enlargement on bail during trial in connection with Case Crime No. 110 of 2021, under Sections 302, 201 I.P.C., registered at P.S. Budhana, District Muzaffarnagar.

Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the deceased was having some love affair with the sister of the applicant. It is further argued that the First Information Report has been registered against unknown persons stating therein that the deceased after having talks on phone on 22.3.2021 stated that he is going in a party but did not return till late night after which search was launched but on 24.3.2021 at about 10.45A.M. one Rizwan informed on telephone that the dead body of the deceased is lying in the field.

It is argued that subsequently the name of the applicant surfaced in the statement of Mahjavi the sister of the applicant with whom the deceased is said to have had love affair who stated that she was in relationship with the deceased and on 22/23.3.2021 she was called by the deceased who wanted to meet her and reached her house after which she came out and both of them were sitting and talking on which applicant and co-accused Aadil saw them and both persons caught hold of the deceased and assaulted him and the applicant is said to have assaulted the deceased with a danda on his head and both of them gagged his mouth and dragged him towards field, after which she came to know that his dead body was found having belt on its neck.

It is argued that subsequently Rahees and Sattar were interrogated who have stated that they saw the incident of beating of the deceased and have assigned the role of tying his neck with his belt by the applicant and dragging him. It is argued that cause of death of the deceased is noted by the doctor as asphyxia due to ante mortem strangulation and as such, the role of strangulating the deceased has been assigned to applicant and even the assault on the deceased is assigned to applicant. It is argued that the criminal history of applicant having two criminal cases has been explained in para no.29 of the affidavit and is in jail since 4.4.2021.

Per contra, learned counsel for the first informant and learned A.G.A. vehemently opposed the prayer for bail and argued that the applicant is the brother of Kumari Mahjavi with whom the deceased was having an affair. He was seen with talking with Kumari Mahjavi even previously the applicant had objected to the said affair. It is argued that the deceased and the sister of the applicant were seen by the applicant and the co-accused Aadil talking after which he was assaulted by them. The bail application of co-accused Aadil has been rejected by this Court vide order dated 3.08.2021 passed in Criminal Misc. Bail Application No.26907 of 2021, hence the prayer for bail of the applicant be rejected.

After having heard learned counsels for the parties and perusing the record, it is apparent that the evidence of Kumari Mahjavi is there on record which states of her

relationship with the deceased and also the factum that she was caught talking with the deceased by the applicant in the night. There was assault by the applicant and the co-accused upon the deceased. The applicant has a motive to commit the offence and he is involved in the present case.

Looking to fact and circumstances of the case, nature of evidence and gravity of offence, I do not find it a fit case to release the applicant on bail.

Accordingly, the bail application is rejected.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

The computer generated copy of such order shall be self attested by the counsel of the party concerned.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing."

8. The statements of the three witnesses have been recorded in the trial. The appreciation of the same is for the trial court to do at the appropriate stage in the trial. Since the trial is under progress the release of the applicant may not be in the fitness of the things at this stage.

9. Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is **rejected**.

Order Date :- 13.12.2023

K.K. Maurya

(Samit Gopal,J.)