

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13891 of 2023

Applicant :- Rampal Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Rakesh Kumar Singh, Ayush Mishra, Prabha Shanker Mishra, Pradeep Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Prabha Shanker Mishra, learned counsel for the applicant, Sri Virendra 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- Rampal Singh, seeking enlargement on bail during trial in connection with Case Crime No. 732 of 2019 under Sections 302, 201 I.P.C., registered at Police Station Chandpur, District Bijnor.
4. This is a second bail application. The first bail application of the applicant was rejected vide order dated 05.02.2020 passed by this Court in Criminal Misc. Bail Application No. 4670 of 2020.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the trial in the present matter is although going on but only three witnesses of fact have been examined till date, as such, it would take time in its conclusion. It is further argued that co-accused Monu @ Manit has been granted bail by Co-ordinate Bench of this Court vide order dated 25.07.2022 passed in Criminal Misc. Bail Application

No. 29281 of 2020; Monu @ Mani vs. State of U.P.; copy of the same is placed at page-129 of the paper book. It is further argued that another co-accused, namely, Sonu @ Tonu @ Amit has also been granted bail by Co-ordinate Bench of this Court vide order dated 21.02.2023 passed in Criminal Misc. Bail Application No. 43402 of 2022; Sonu @ Tonu @ Amit vs. State of U.P.; copy of the same has been placed at page-126 of the paper book. It is argued that looking the same, the applicant, who is jail since 14.10.2019 and aged about 65 years at the time of his arrest, as has been mentioned in the arrest memo, copy of which is annexed at page-65 of the paper book, is entitled to be released on bail. It has also been pointed out that the applicant is not having any criminal history as stated in para-31 of the affidavit.

6. Per contra learned counsel for the State vehemently opposed the prayer for bail and argued that the first bail application of the applicant was rejected on merit by a detailed order. It is further argued that the trial in the present matter is going on, in which three witnesses of fact have been examined and, as such, releasing the applicant on bail may have adverse effect.

7. After hearing the counsel for the parties and perusing the record, it is apparent that this is the second bail application moved on the behalf of the applicant. The first bail application of the applicant was rejected on merit by this Court vide order dated 05.02.2020 passed in Criminal Misc. Bail Application No. 4670 of 2020, which reads as follows:-

"Sri Gaurav Kakkar, Advocate files a Vakalatnama on behalf of the complainant and a supplementary affidavit filed by learned counsel for the applicant which are taken on record.

Heard Miss Swati Agrawal Srivastava, learned counsel for the applicant, Sri Gaurav Kakkar, learned counsel for the complainant, learned A.G.A. and

perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Rampal Singh seeking enlargement on bail during trial in connection with Case Crime No. 732 of 2019, under Sections 302 and 201 I.P.C., registered at P.S. Chandpur, District Bijnor.

Learned counsel for the applicant argued that the First Information Report was lodged on 13.10.2019 at about 08:50 hrs by the uncle of the deceased Vikas stating therein that his nephew taken away by the applicant, Monu and Sonu in an Alto Car, and later on, his dead body was recovered in the jungle of village Sadanpur. She argues that the applicant is the father-in-law of the deceased Vikas and there was no occasion for him to commit the murder and thereby make his daughter a widow himself. In the statement of Payal, the daughter of the deceased recorded under Section 161 Cr.P.C. which is annexure no. 5 to the affidavit, no doubt mentions that the deceased was being taken away by her maternal grandfather along with her two mausas namely Monu and Sonu in the car of the applicant, but in the later part of the said statement, has stated that she does not know whether her father and her nana had come out of the car. She further argues that there is an alleged recovery of chappal from the house of the applicant on his pointing out which is said to be that of the deceased. She argues that so far as the recovery of chappal is concerned that the same is an item of general use in the house and has not been identified as that being of the deceased. She has further drawn the attention of the Court to the postmortem report of the deceased, in which, the cause of death as opined by the doctor, is shock and haemorrhage, as a result of anti-mortem firearm injury and there is a recovery of country made pistol from the pointing out of co-accused Sonu and Monu. She has further argued that the son of the deceased had moved an application on 08.11.2019 annexure no. 8 to the affidavit before the police mentioning therein that his mother, Nana and two mausas are in jail, and the informant along with his sons Sanjay and his wife are regularly torturing him and his sister because they were alone in the house. They are trying to sell off his land. She further argues that the co-accused Smt. Savita has been granted

bail by another Bench of this Court vide order dated 08.01.2020 passed in Crl. Misc. Bail Application No. 55785 of 2019. The applicant is the father of the deceased and aged about 68 years having no criminal history to his credit. There is no eye witness of the incident and the present case is a case of circumstantial evidence in nature, in which, the links are completely missing so as to form a chain therein to implicate the applicant. The applicant is in jail since 14.10.2019.

Per contra, learned AGA as well as counsel for the informant have opposed the prayer for bail and argued that there was no reason at all for the first informant to falsely implicate the applicant. Payal, the daughter of the accused is a natural witness and has given a very natural version of the present incident. There is a recovery of chappal and also of the said vehicle which is registered in the name of the applicant which is incriminating in nature. The applicant along with other co-accused persons have been stated to have taken the deceased in the car belonging to him, and subsequently, the dead body was found. The proximity of taking away the deceased and the recovery of the dead body, is so-less that there are no chances of him parting ways with the accused persons which would lead to a conclusion that the deceased was last seen in the company of the applicant and other co-accused persons and as such they were instrumental in the murder. They have further argued that the First Information Report was lodged on 13.10.2019 at 08:50 hrs for taking away the deceased on 12.10.2019 at about 22:30 hrs and after the recovery of the dead body and as such the First Information Report is prompt without any delay whatsoever coupled with the fact that there is no reason for the first informant to falsely implicate the applicant.

Considering the totality of the case in particular, nature of evidence available on record and considering the fact that the deceased was last seen in the company for the applicant and two other co-accused persons namely Sonu and Monu. There is specific version of taking away the deceased by the applicant and the other co-accused persons. The proximity between taking away and the recovery of the dead body is very less and as such the possibility on they being

instrumental in the murder, cannot be ruled out. The car alleged to have been used in taking away the deceased belongs to the applicant.

Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I do not find it a fit case for bail.

The bail application is, accordingly, rejected."

8. A Co-ordinate Bench of this Court vide order dated 28.07.2022 has called for the status of the trial from the concerned trial court. The said report has been received, which has been perused by this Court. As per the said report, the trial is in progress and three witnesses of fact have been examined, who had supported the prosecution case. Insofar as, parity is concerned, the same is not binding on this Court.

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.

10. However, it is provided that the applicant may file an application for expeditious disposal of the trial of the case before the court concerned within two weeks from today, which may as per its load of work, diary and pendency of cases, pass appropriate orders on the same.

(Samit Gopal, J.)

Order Date :- 18.10.2023
Shiraz