

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14378 of 2023

Applicant :- Monu

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Kumar Tiwari, Sushil Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Sushil Kumar Pandey, learned counsel for the applicant and Sri Suresh Bahadur Singh, learned AGA for the State.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 515 of 2022, under sections 302, 120B and 201 I.P.C., P.S.Khatauli, district-Muzaffar Nagar, during pendency of the trial in the court below.
3. FIR of the present case was lodged against the applicant and two others and according to FIR on 1.10.2022 applicant and his two associates has taken the deceased from his house at about 1:30 in the noon but brother of the informant i.e. deceased did not return in the night and next day, i.e. on 6.10.2022 his dead body was found in a sugarcane field.
4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless. Applicant is the brother-in-law (saala) of the deceased and he has been falsely implicated by the informant only due to suspicion. He further submits that although in the FIR informant stated that deceased had gone along with applicant and two others but when

his statement was recorded under Section 161 Cr.P.C., then he stated that on the mobile call of the co-accused Dharam Raj i.e. maternal uncle of the applicant, the deceased had gone from his house.

5. He further submits that as per prosecution during investigation after his arrest applicant confessed his guilt and on the pointing out of co-accused Dharam Raj wooden stick was recovered and on the pointing out of applicant the motorcycle of the deceased was recovered but entire alleged recovery is totally false and baseless and this fact is even evident from the recovery memo, which shows that it is nowhere stated that from where the motorcycle of the deceased was recovered and further from the perusal of the postmortem report of the deceased, it appears that he died due to throttling. He next submits that applicant is not having any previous criminal history and he is in jail in the present matter since 7.10.2022, co-accused Dharam Raj has already been enlarged on bail by this Court vide order dated 2.5.2023 passed in Criminal Misc. Bail Application No. 13265 of 2023 (Dharam Raj @ Rajnish Vs. State of U.P.). Therefore, he may be released on bail.

6. Per contra, learned AGA opposed the prayer for bail but could not dispute the arguments advanced by the learned counsel for applicant.

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

8. It is a case of circumstantial evidence. Although in the FIR it is alleged that deceased had gone along with applicant and other co-accused from his home but when the statement of the informant was recorded during investigation, then he stated that on the phone call of the co-accused Dharam Raj his brother had gone to meet

him. Further although on the pointing out of the co-accused a wooden stick was recovered but postmortem report suggests that deceased died due to throttling. Further, as per allegation on the pointing out of applicant and co-accused Dharam Raj motorcycle of the deceased was also recovered but from the recovery memo, which was produced by learned A.G.A. during course of argument, it appears that even the place of recovery of motorcycle has not been mentioned in the recovery memo and the recovery memo has been prepared in most cursory manner.

9. Therefore, from the discussions made above, in my view, applicant is entitled to be released on bail.

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

11. Let the applicant Monu 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.

12. 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.

13. 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 :- 12.10.2023

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