

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24201 of 2021

Applicant :- Saleem

Opposite Party :- State of U.P.

Counsel for Applicant :- Sharad Kumar Srivastava, Arvind Agrawal, Mohd Javed Akhter, Mohd. Monis

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. Heard Sri Mohd. Monis, learned counsel for the applicant, Sri Shashi Kant Pandey, learned counsel for the State and perused the material on record.
2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Saleem seeking enlargement on bail during trial in connection with Case Crime No. 23 of 2020, under Sections 302, 201 I.P.C., registered at Police Station Jafarganj, District Fatehpur.
3. FIR of the matter was lodged on 17.03.2020 by Chando Bibi against the applicant and co-accused Fahim alleging therein that on 16.03.2020 her son Raheesh was taken by the accused persons at about 8.00 p.m. for a party but they assaulted him with a *kulhadi* near a tubewell and murdered him due to old enmity. They threw his dead body in a ditch besides the road to conceal the factum of murder. Co-accused Fahim came to her after the incident and told her that her son has met with an accident. When she and other family members reached the spot they found that it is not an accident but a murder and then there is a belief that the accused persons have murdered her son.
4. Learned counsel for the applicant argued that the present incident is circumstantial in nature as there is no eye witness of the murder. The allegation against the applicant and co-accused Fahim is of taking away the deceased with them. It is argued that there is alleged recovery of an axe on pointing out of both the accused persons. He further argued that first informant Chando Bibi was examined before the trial court as PW1 who did not support the prosecution case and has been declared hostile. It is further argued that co-accused Fahim has been granted bail by a Co-ordinate

Bench of this Court vide order dated 13.01.2023 passed in Crl. Misc. Bail Application No. 51773 of 2022 (Faheem vs. State of U.P.). Copy of the order has been produced before the Court which is taken on record. He further argued that applicant has no criminal history as stated in para 21 of the affidavit and he is in jail since 18.03.2020.

5. *Per contra*, learned counsel for the State opposed the prayer for bail.

6. After having heard learned counsels for the parties and perusing the record it is evident that the present case is a case of circumstantial evidence and there is no eye witness to the murder. The evidence against the applicant and co-accused Faheem is of taking away the deceased and being last seen with him. Co-accused Faheem has already been enlarged on bail.

7. Let the applicant **Saleem** be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

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 and send the applicant to prison.

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

Order Date :- 27.10.2023

Madhurima

(Smit Gopal, J.)