

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 22791 of 2023

Applicant :- Nitish Saini

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashutosh Srivastava, Ritvik Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Shri Ritvik Srivastava, learned counsel for the applicant and Shri Suresh Bahadur Singh, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.446 of 2023, under Section 302 I.P.C. & Sections 4/25 Arms Act, Police Station Karchhana, District Prayagra, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 10.12.2022 on the basis of suspicion against one Mukesh Pal, under Section 302 I.P.C.
4. Learned counsel for the applicant submits that applicant was not named in the FIR but when statement of the wife of the deceased was recorded under Section 161 Cr.P.C. then she stated that when she made conversation with her husband i.e. deceased on phone then he informed her that at present he is residing with the applicant He further submits, after recovery of the dead-body of the deceased i.e. her husband merely on the basis of her statement applicant was arrested.
5. He further submits that as per prosecution, after arrest applicant confessed his guilt and on his pointing out one *Chapad*, which was

alleged to have been used in the crime, was recovered.

6. He further submits that except this evidence, there is no other evidence against the applicant on record.

7. He further submits that the applicant is not having any criminal history and he is in jail in the present matter since 15.12.2022 i.e. for almost a year.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

10. It is a case of circumstantial evidence and applicant was not named in the FIR but on the basis of suspicion, wife of the deceased disclosed his name in her statement recorded under Section 161 Cr.P.C. Further, as per prosecution when applicant was arrested, he confessed his guilt and from his possession one *Chapad*, which was alleged to have been used in the crime, was recovered therefore, it reflects that except his confessional statement and recovery of "*Chapad*", there is no other evidence against him on record. In my view, prima-facie at this stage merely on the basis of such defence, it cannot be said that applicant participated in the alleged crime.

11. Further, applicant is not having any criminal history and he is in jail in the present matter since 15.12.2022 i.e. for almost a year.

12. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be released on

bail.

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

14. Let the applicant- **Nitish Saini**, 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.

15. 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.

16. 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 :- 2.12.2023
Zafar