

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 25222 of 2023

Applicant :- Pankaj @ Deen Dayal

Opposite Party :- State of U.P.

Counsel for Applicant :- Pavan Kumar Kushwaha, Thakur Prasad Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Supplementary affidavit filed today by the learned counsel for the applicant is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. The F.I.R. dated 31.08.2022 was lodged by the informant against one Sher Singh and one unknown person for an incident dated 30.08.2022 at about 12:00 hours to 15:00 hours for the offence punishable under Sections 376D, 302, 201 I.P.C. alleging therein that on 29.08.2022 his sister, Angura Devi told Sher Singh for irrigating her agricultural field but he did not put his engine on that day, thereafter, on 30.08.2022 Sher Singh put his engine in her field and called the sister of informant by one Jigniya Devi, thereafter when the sister of informant reached at her agricultural field along with diesel, Sher Singh and two other accused persons after committing her rape killed her.
4. Learned counsel for the applicant further submits that applicant has falsely been implicated in the case. No one had seen the incident. The informant in his statement recorded before the police has repeated the same version of the F.I.R. The other witnesses have not made any allegation against the applicant in their statements recorded before the police. Learned counsel for the applicant further submits that one witness, Vishnu, in his statement recorded before the police has stated that there was love affairs between the applicant and the daughter of the deceased. Learned counsel for the applicant further submits that daughter of the deceased, namely, Lajja Devi, in her statement recorded before the police has stated that she loves the applicant and wants to marry with him, but her mother was not ready for the same, on the date

of incident her mother beaten her for the same, thereafter, she went to the agricultural field having diesel the applicant made a call on her mobile phone then she told that her mother beaten her then the applicant became angry and told that your mother will not beat you again, thereafter, applicant asked her where is your mother then she replied that she went to the agricultural field and about 3:00 p.m. the applicant again made a phone call to her to search her mother and in the evening she received information that dead body of her mother is lying in the agricultural field. Learned counsel for the applicant further submits that on the basis of statement of Vishnu and Lajja Devi the complicity of applicant came into light and he has been implicated in the case falsely. Learned counsel for the applicant further submits that applicant has neither committed rape nor he is involved in the murder of the deceased and there is no evidence against him. Learned counsel for the applicant further submits that in the postmortem of the deceased no external vaginal injury or tear was found and her uterus was found non gravid by the doctor and cause of death of the deceased was found to be asphyxia due to ante mortem smothering. Learned counsel for the applicant further submits that during the course of postmortem of the deceased her vaginal swabs were also taken which were send to Forensic Science Laboratory, Ghaziabad for D.N.A. test, and in the letter dated 05.08.2023 of Circle Officer (Crime), District Bareilly, it is written that on 23.04.2023 a report was submitted by the aforesaid laboratory wherein it has been stated that in the samples of vaginal swabs of the deceased sperms of male were found but they do not match with the samples of applicant and the co-accused, Sher Singh, therefore, one other co-accused, Pradeep is being searched for taking his sample. The said letter has been annexed as Annexure-1 to the supplementary affidavit filed today. Learned counsel for the applicant, thus, submits that medical evidence also does not support the prosecution version and the applicant has falsely been implicated in the case. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 10.12.2022, having no criminal history.

5. Per contra, learned A.G.A. has opposed the prayer for bail of the

applicant by contending that innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence, but he has not made any dispute regarding the D.N.A. report which has been annexed with the supplementary affidavit filed today.

6. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

7. Let applicant-**Pankaj @ Deen Dayal**, involved in S.T. No. 273 of 2023, arising out of Case Crime No. 355 of 2022, under Sections 376A, 302, 201 I.P.C., Police Station Bhuta, District Bareilly, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(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.

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 in accordance with law.

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

Order Date :- 15.12.2023

Mustaqeem.