

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30502 of 2023

Applicant :- Jogendra @ Modha

Opposite Party :- State of U.P.

Counsel for Applicant :- Vivek Kumar Singh, Mayank Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Shri Vivek Kumar Singh, learned counsel for applicant, Shri Ajay Singh, learned A.G.A.-1 for 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- Jogendra @ Modha seeking enlargement on bail during trial in connection with Case Crime No. 1101/2022, under Sections 302, 201, 34, 120-B I.P.C. and Section 4/25 Arms Act, registered at Police Station Baraut, District Baghpat.

3. The first information report of the present matter was lodged on 22.11.2022 by Akram against the applicant, Hina, Vinod Jogi, Abid (subsequently stated to be Akshay) with the allegation that his brother Aslam used to have a fruit cart at bus stand. His wife Hina was having an illicit relationship with Vinod Jogi on which his brother had fight several times with Vinod Jogi but Vinod Jogi did not change his ways. On 21.11.2022 at about 9:00 p.m. his brother met him at the bus stand but they did not reach home in the night. On 22.11.2022 at about 7:00 a.m. he received an information that his brother has been murdered. Hina with her lover Vinod Jogi along with applicant and Abid have murdered his brother and had thrown his dead body near a canal.

4. Learned counsel for applicant argued that the applicant has been falsely implicated in the present case. It is argued that there is no eye witness of the murder. The implication of the applicant in the present matter is on the basis of suspicion only. It is further argued that after the arrest of the applicant the prosecution shows recording of his confession by the police and then recovery of a knife on his pointing out from the sugarcane field of one Virendra. It is argued that insofar as the recovery memo is concerned the same at the very outset is a manipulated document inasmuch as in the end of it, it is stated to have been dictated by the Inspector-in-charge to one Sub-inspector on his laptop and then it is mentioned that a printout would be taken and signature would be got done. It is further argued that it was not prepared at the place of recovery but was prepared later on. It is further argued that co-accused Vinod Jogi, who is said to be having illicit relationship with Smt. Hina wife of the deceased, has been enlarged on bail by co-ordinate Bench of this Court vide order dated 21.04.2023 passed in Criminal Misc. Bail Application No. 16636/2023 (Vinod Jogi Vs. State of U.P.). The said order has been annexed as Annexure-15 to the

affidavit in support of bail application. It is further argued that while placing annexure SA-2 of the supplementary affidavit dated 20.11.2023 that co-accused Smt. Hina wife of the deceased, has been enlarged on bail by co-ordinate Bench of this Court vide order dated 06.07.2023 passed in Criminal Misc. Bail Application No. 24395/2023 (Smt. Hina Vs. State of U.P.) and further co-accused Akshay has been enlarged on bail by co-ordinate Bench of this Court vide order dated 03.07.2023 passed in Criminal Misc. Bail Application No. 28837/2023 (Akshay Vs. State of U.P.). It is argued that implication of the applicant in the present case is totally false and without any legal and reliable evidence. Insofar the recovery of knife and stone is concerned the same have no corroboration. The said recovery is under serious challenge looking to the nature of the said alleged recovery memo. It is argued that the applicant has no criminal history as stated in paragraph no. 30 of the affidavit in support of bail application. The applicant is in jail since 22.11.2022.

5. Per contra learned A.G.A. for State vehemently opposed the prayer for bail and argued that the applicant is the main assailant in the present case looking to his confessional statement and the recovery on his pointing out. It is argued that case of the applicant is distinguishable with of the other accused on the said two counts. It is argued that the bail be thus rejected.

6. After having heard the learned counsel for the parties and perusing the record, it is evident that implication of the applicant as per the FIR is on the basis of suspicion. There is no eye witness to the murder. The alleged recovery of knife and stone although is shown on the pointing out of the applicant but the same is from an open place. There is serious challenge on the recovery memo regarding the manner it has been drawn. Co-accused Vinod Jogi, Smt. Hina and Akshay have been granted bail by co-ordinate Benches of this Court.

7. Looking to the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

8. Let the applicant- **Jogendra @ Modha** 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.

9. 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.

10. The bail application is **allowed**.

Order Date :- 7.12.2023

Sharad/-

(Samit Gopal, J.)