

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29778 of 2023

Applicant :- Irfan Ahmad

Opposite Party :- State of U.P.

Counsel for Applicant :- Udai Bhan Singh,Avanish Pratap Singh

Counsel for Opposite Party :- G.A.,Awadhesh Kumar Malviya

Hon'ble Sameer Jain,J.

1. Heard Sri Avanish Pratap Singh, learned counsel for the applicant, Sri Arpit Malviya, Advocate holding brief of Sri A.K. Malviya, learned counsel for the infmrant and Sri Ravi Kant Kushwaha, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 91 of 2023, under Sections 302, 120-B IPC, Police Station- Jamaniya, District- Ghazipur, during pendency of the trial in the court below.

3. FIR of the present case was lodged against applicant and co-accused Shahbaj Khan on the basis of suspicion.

4. Learned counsel for the applicant submitted that only due to reason that there was some dispute between applicant side and informant side with regard to money, applicant has been made accused in the present matter.

5. He further submitted that however, in the FIR, only suspicion was raised by the informant but after one month statement of one Bindu was recorded by the Investigation Officer under Section 161 Cr.P.C. and he stated that on 06.04.2023 i.e. on the date of incident he witnessed the applicant while he was going inside and coming out from the house of the deceased. He further submitted that statement of Bindu appears to be vague as he did not even disclose any time and merely on the basis of such statement, which was recorded after one month, it can be said that applicant also involved in the commission of present crime.

6. He further submitted that during investigation, statement of the daughter of the informant Vedanjali was recorded and she stated that when she made video call to her mother i.e. deceased on 06.04.2023 at about 04:09 p.m. in the evening then she witnessed that applicant was standing nearby her mother and thereafter her

mother died but surprisingly during investigation, Investigating Officer did not even verify the fact that whether any video call was made by Vedanjali, the daughter of the deceased, to the deceased or not, therefore, merely on the basis of such bald and verbal allegation made by the daughter of the deceased, at this stage, it cannot be said that she witnessed the applicant on 06.04.2023 at about 04:09 p.m. in the evening during video call.

7. He further submitted that apart from the statement of Bindu and Vedanjali, the daughter of the deceased, only evidence against the applicant is his confessional statement and extra judicial confession of the applicant and co-accused Shahabaj before one Jumman.

8. He further submitted that applicant is not having any criminal history and he is in jail since 09.04.2023 i.e. for last six months.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that it is a case of circumstantial evidence and applicant was having motive to commit crime and he was last seen by one witness Bindu, while he was coming out from the house of the deceased.

10. They further submitted that even daughter of the deceased in her statement recorded under Section 161 Cr.P.C. stated that when she made video call to her mother i.e. deceased then she witnessed the applicant while he was standing nearby her mother but could not dispute the fact that the statement of both the witnesses, who provided the evidence of last seen, were recorded after one month.

11. They further could not dispute the fact that except the statement of the daughter of the deceased, there is no other evidence on record, which can show that she made video call to her mother i.e. deceased as during investigation, Investigating Officer did not collect any detail of the alleged video call of the daughter of the deceased.

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

13. It is a case of circumstantial evidence and however, it appears that applicant was having motive to commit crime as some dispute with regard to money was going on between applicant and deceased but except motive, there is no cogent evidence appears to be available on record and it appears that there are confessional statements of the applicant and other co-accused before the police

and extra judicial confession before one Jumman however, apart from these two evidences, there is also statement of Vedanjali, daughter of the deceased, who although, stated that when she made video call to her mother then she witnessed that applicant was also standing nearby her mother but during investigation, Investigating Officer did not collect any evidence whether she made any video call to the deceased or not.

14. Further, applicant is not having any criminal history and he is in jail for more than six months.

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

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

17. Let the applicant- **Irfan Ahmad** 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.

18. 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.

19. 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

KK Patel