

Neutral Citation No. - 2023:AHC:199846

Reserved On:- 09.10.2023

Delivered On:- 16.10.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31868 of 2023

Applicant :- Ajay @ Guddu

Opposite Party :- State of U.P.

Counsel for Applicant :- Jag Narayan, Sushil Kumar

Counsel for Opposite Party :- G.A., Manoj Kumar Srivastava

Hon'ble Siddharth, J.

1. Heard Sri Jag Narayan, learned counsel for the applicant; Sri Ajay Kumar Garg, Advocate, holding brief of Sri Manoj Kumar Srivastava, learned counsel for the informant; learned AGA for the State and perused the material placed on record. .

2. There is allegation in the FIR that the cousin of the informant, namely, Jagpal, was married to co-accused, Mamta and on 31.05.2022. After their marriage the informant came to know that co-accused, Mamta, was having love affair with the applicant prior to her marriage and had eloped with him earlier. It is further alleged that even after marriage of co-accused, Mamta, she was in touch with the applicant. On 15.06.2022 she pressurized her deceased husband to take her to her matrimonial home and he brought her on motorcycle. On 17.06.2022 the deceased accompanied some villagers on their tractor and was seen by number of persons in the way but he did not returned. Thereafter missing report was lodged. On 18.06.2022 his dead body was recovered. It was alleged that the applicant has caused his murder by sharp edged weapon in conspiracy with co-accused, Mamta and other unnamed accused.

3. Learned counsel for the applicant submits that it is a case of false implication. There is no witness of the incident and the motive of illicit relationship between the co-accused, Mamta and the applicant has been falsely assigned. He has submitted that it is a case of circumstantial evidence. The police has falsely implicated the applicant only to workout the case.

4. Learned counsel for the applicant has further submitted that the story of illicit relationship has only been cooked up to deprive the co-accused, Mamta, from her claim to the property left behind by her deceased husband.

5. Learned A.G.A has opposed the submission and placed before this Court the case diary prepared by the investigating officer. He has submitted that recovery of one piece of brick was made on the pointing out of the applicant from an open place whereon spots like blood were found and the applicant confessed that he caused the murder of the deceased by aforesaid piece of brick.

6. He has further submitted that the applicant used to talk on mobile phone with the co-accused, Mamta, as clear C.D. No. 17. Recovery of C.D.R details of conversation between of mobile phones of deceased and the applicant were discovered.

7. Learned counsel for the informant has also opposed the submissions made by counsel for the applicant but could not dispute the aforesaid arguments.

8. In the case diary, there is no C.D.R details regarding talking of the applicant with co-accused, Mamta, prior to the incident or at the time of incident and also after the incident.

9. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of ***Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021***; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

10. Let the applicant, Ajay @ Guddu, involved in Case Crime No. 311 of 2022, under Sections- 302, 201, 120-B IPC, Police Station- Gursahaiganj, District- Kannauj, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence,

without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) 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. is issued and the 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

10. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

11. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 16.10.2023

Rohit