

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38147 of 2022

Applicant :- Kannu @ Janardan

Opposite Party :- State of U.P.

Counsel for Applicant :- Anurag Pandey, Ankit Saran

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Ankit Saran, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 356 of 2021, under Sections 452, 302 IPC, Police Station Prem Nagar, District Jhansi during pendency of the trial.
4. FIR of the present case was lodged on 11.10.2021 against applicant and according to the FIR on 11.10.2021 at about 3.30 PM in the after noon informant had gone to purchase medicine for her husband with her daughter and after 15-20 minutes when she returned then found that her mother-in-law was lying dead and in other room her husband Chandan Singh was lying in injured condition and on query her husband informed her that applicant made assault upon him and his mother through axe.
5. It is further mentioned in the FIR that one unknown lady, who resided in the neighborhood of the informant, informed her that she witnessed an unknown boy aged about 24-25 years while he was running from her house. It is further mentioned in the FIR that

when informant has taken her mother-in-law and husband to the Medical College, Jhansi then doctor declared them dead.

6. Learned counsel for the applicant submitted that admittedly there is no eye witness account in the present matter and FIR was lodged on the basis of alleged information furnished by the injured, the husband of the informant but even in the FIR it is mentioned that when immediately after the alleged information furnished by the husband, informant has taken him to the hospital then doctor declared him dead and this fact suggests that actually the husband of the deceased never informed her about the fact that applicant is the person, who caused injury to him and his mother and only due to previous enmity, which has also been admitted in the FIR, applicant has been made accused in the present matter.

7. He further submits that even from the post mortem report of the husband of the informant, it reflects that he sustained as many as 14 incised wounds and it is hard to believe that after receiving such serious injuries on different parts of the body including vital part, the husband of the informant would have been survived and it appears that after receiving such injury he would not have been in a position even to inform about the incident to the informant.

8. He further submits that apart from the alleged information furnished by one of the deceased to the informant, the another circumstances against the applicant is that as per allegation when applicant was arrested then he confessed his guilt and on his pointing out one blood stained axe was recovered from the roof of the informant but as recovery of alleged weapon was made from the house of the informant, therefore, possibility cannot be ruled out that after recovery of dead body subsequently it as been shown to be recovered on the pointing out of the applicant from the roof

of the informant as applicant had already been made accused in the FIR by the informant.

9. He further submits that however as per informant one unknown lady of her neighborhood informed her that she witnessed a man aged about 25 years old while he was running from her house and subsequently she was identified as Babli Yadav and she in her statement recorded during investigation stated that applicant was the person who was running from the house of informant but she also stated that as the boy, who was running from the house of the informant very often visited her house, therefore, she had no doubt at that time and this fact clearly suggests that she did not disclose the correct facts as admittedly the relationship of applicant and informant side were not cordial one and informant herself in the FIR stated that as applicant earlier withdrew some amount from her account, therefore, about two years before she lodged FIR against him and pursuant to the FIR lodged by her, he was also arrested.

10. He further submits that even during trial when alleged witness namely Babli Yadav appeared before the trial court she did not support the prosecution case and has been declared hostile. He further submits that it is a case of double murder but there is no cogent evidence against the applicant on record.

11. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 16.10.2021 i.e. for last more than two years and till date trial of the case could not be concluded.

12. He further submits that only two prosecution witnesses could be examined till date however in the charge-sheet there are as many as 19 prosecution witnesses, therefore, there is no hope of

early disposal of the trial and it appears that trial of the case is moving with languid pace.

13. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case of double murder and applicant was named in the FIR but he fairly conceded that there is no eye witness account and it appears that on the basis of information furnished by the husband of the informant applicant was made accused in the present matter.

14. He further could not dispute the fact that post mortem report of the husband of the informant suggests that he sustained as many as 14 injuries. He further could not dispute the fact that alleged recovered blood stained axe, which was recovered on the pointing out of applicant, was recovered after five days from the roof of the informant. He further could not dispute the fact that applicant is not having any criminal history and in the present matter he is in jail for last more than two years.

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

16. However, it is a case of double murder, in which, husband and mother-in-law of the informant were murdered but from the record it reflects that there is no eye witness account and entire prosecution case rest upon the following three circumstances:

(a) when informant and her daughter returned home then her husband, who was according to her alive, informed her that applicant caused injuries from axe to him and his mother;

(b) when applicant was arrested then he confessed his guilt and on his pointing out one blood stained axe was recovered from the roof of the informant; and

(c) one neighbor namely Babli Yadav informed the informant that at the time of incident she witnessed that one boy aged about 25 years was running from the house of the informant and she subsequently during investigation identified him as applicant.

17. As far as the circumstance (a) is concerned, from the post mortem report of the husband of the informant, it reflects that he sustained as many as 14 incised wound on all over his body, therefore, argument advanced by learned counsel for the applicant cannot be completely ruled out at this stage that after receiving such injuries on different parts of the body including vital part, it is hard to believe that husband of the informant would have been in a position to inform about the incident to the informant. Further, when immediately after the information furnished by her husband, informant has taken him to the hospital, then doctor declared him dead, therefore, it appears either on the way or even at home her husband had already died.

18. Further, as per circumstance (b), however, on the pointing out of the applicant an axe was recovered but alleged recovery was made after five days from the roof of the informant, therefore, in this regard also argument advanced by learned counsel for the applicant cannot be completely brushed aside at this stage.

19. The last circumstance i.e. (c) is the statement of the neighbor of the informant, who stated that a 25 years old boy was running from the house of the informant and when police arrested the applicant then she identified him that applicant is the person, who was running from the house of the informant but in the statement recorded under Section 161 Cr.P.C., the neighbor of the informant also stated that applicant used to visit the house of the informant very often, therefore, she could not sense any foul at that time but

from the record, it reflects that it is admitted case of the prosecution that applicant and informant were having inimical terms and even as per informant due to previous enmity, applicant committed the murder of her husband and her mother-in-law, therefore, from this angle too, the third circumstance against the applicant does not appears to be convincing.

20. Further, even during trial, when neighbor of the informant namely Babli Yadav appeared before the trial court then she does not support the prosecution case and was declared hostile.

21. Further, applicant is not having any criminal history and in the present matter he is in jail since 16.10.2021 i.e. for last more than two years and till date trial of the case could not be concluded and out of total 19 prosecution witnesses only two prosecution witnesses could be examined, therefore, it appears that trial of the case is moving with languid pace and there is no hope of its early disposal.

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

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

24. Let the applicant - **Kannu @ Janardan** 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.

25. 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.

26. 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 :- 13.12.2023

AK Pandey