

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40136 of 2022

Applicant :- Devendra @ Deewan

Opposite Party :- State Of U.P. Through S.H.O.

Counsel for Applicant :- Shailendra Kumar Tripathi, Bipin Kumar, Mohd. Naushad Siddiqui

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary filed today on behalf of the applicant is taken on record.
2. Heard Sri Mohd. N. Siddiqui, learned counsel for the applicant and Sri Santosh Nigam, learned AGA for the State.
3. The instant bail application has been filed on behalf of the applicant seeking release on bail in Case Crime No. 356 of 2021 under sections 302, 504 IPC, Police Station Gursahaiganj, District Kannauj.
4. Learned counsel for the applicant submits that this is second bail application filed on behalf of the applicant and the first application was dismissed by this court on 28/3/2022. The present application has been moved on the ground that the first application was dismissed mainly on the ground that investigating officer also recorded the statement of the deceased in which, the deceased stated against the applicant but when father of the deceased i.e. the informant and one of the eye witness appeared before the trial court, they categorically stated before the trial court that the deceased never disclosed the name of the applicant to the investigating officer and the testimony of these two witnesses totally belies the alleged statement of the deceased recorded by the investigating officer under section 161 Cr.P.C.
5. He further submits that applicant is in jail since 8/7/2021 i.e. for more than two years and he does not have any previous criminal history to his credit.
6. Per Contra, learned AGA opposed the prayer for bail and submits the first bail application of the applicant was dismissed

after considering the dying declaration of the deceased recorded by the investigating officer and as, till date, the investigating officer could not be examined by the trial court, therefore, merely on the basis of the testimonies of the aforesaid two witnesses, dying declaration of the deceased recorded by the investigating officer cannot be discarded at this stage. Therefore, the applicant should not be released on bail.

7. I have heard both sides and perused the record.

8. This is second bail application on behalf of the applicant and the first bail application was dismissed on the ground that applicant was named in the dying declaration of the deceased recorded by the investigating officer and although, learned counsel for the applicant submits that informant and brother of the deceased i.e. one of the eye witness when appeared before the trial court, they categorically stated that deceased never disclosed the name of the applicant before the investigating officer but I find force in the argument advanced by learned AGA that merely on the basis of testimonies of other witnesses, the dying declaration recorded by the investigating officer cannot be disbelieved at this stage. Further, the investigating officer could not be examined by the trial court till date.

9. Therefore, considering the facts and circumstances of the case as discussed above, I find no merit in the second bail application.

10. Accordingly, the second bail application is also ***dismissed***.

11. However, considering the fact that applicant is in jail since more than two and a half years and in the chargesheet there are as many as 10 witnesses, the trial court is directed to conclude the trial within a period of one year from the date of production of certified copy of this order strictly in view of the provisions of Section 309 Cr.P.C., if there is no legal impediment.

Order Date :- 16.10.2023

Madhurima