

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34194 of 2023

Applicant :- Sarjeet

Opposite Party :- State of U.P.

Counsel for Applicant :- Prince Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Sri Prince Srivastava, learned counsel for the applicant, Sri Devendra Nath Mishra, learned counsel for the 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- Sarjeet seeking enlargement on bail during trial in connection with Case Crime No. 193 of 2022 under Section 302 I.P.C., registered at Police Station Bhagatpur, District Moradabad.

3. This is the second bail application of the applicant. The first bail application of the application was dismissed by this Court vide order dated 6.7.2023 passed in Criminal Misc. Bail Application No. 20744 of 2023 (Sarjeet Vs. State of U.P.) on concealment of criminal antecedents of the applicant with liberty to file a fresh bail application with full and proper details.

4. The First Information Report of the present matter was lodged on 14.8.2022 by Rajendra Singh against unknown persons alleging therein that on 12.8.2022, his brother Jaiveer Singh went to Kashipur Udham Singh Nagar, Uttarakhand for work but did not return back till late night. On the next morning on 13.8.2022 at about 6:30 A.M. Nanhe Singh, the village Pradhan received the

information on phone that a boy of his village is lying in injured condition near the field of one Satpal on which the village Pradhan informed the informant about it. Then first informant along with his brother Rajaram went on the spot and found his brother lying injured and took him to the hospital where the doctor declared him dead.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. The applicant is not named in the First Information Report. The First Information Report has been lodged against the unknown person. It is argued that the statement of the first informant was recorded under Section 161 Cr.P.C. in which he also does not name any accused. Subsequently, the second statement under Section 161 Cr.P.C. was recorded after seven days i.e. on 21.8.2022 wherein he discloses the name of the applicant and states that he used to come to his mother to know about the whereabouts of the deceased and he is the person who has murdered his brother. It is argued that the implication of the applicant is on the basis of suspicion only. There is no credible evidence in the matter. He further argued that charge-sheet in the matter has been submitted and as such there are no chances of the applicant tampering with the evidence. It is further argued that there is no eye witness to the murder. The present case is a case of circumstantial evidence in which the links of the chain of circumstances are missing. He further argued by placing paragraph-33 of the affidavit that the applicant was involved in one other case earlier in which after being granted bail there was a compromise between the parties and the case ended on the basis of said compromise. It is further argued that the applicant is in jail since 30.8.2022.

6. *Per contra*, learned counsel for the State opposed the prayer for

bail.

7. After having heard the learned counsel for the parties and perusing the record, it is evident that the applicant is not named in the First Information Report and in the statement of the informant recorded under Section 161 Cr.P.C. initially. His implication is in the second statement of the first informant recorded under Section 161 Cr.P.C. The case is of circumstantial evidence. There is no eye witness of the murder.

8. Looking to the facts and circumstances of this case, the nature of evidence 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.

9. Let the applicant- Sarjeet 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.

10. 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.

11. The bail application is **allowed**.

Order Date :- 12.12.2023

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(Samit Gopal, J.)