

Neutral Citation No. - 2023:AHC:199849

Reserved On:- 09.10.2023

Delivered On:- 16.10.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36715 of 2019

Applicant :- Ankit

Opposite Party :- State of U.P.

**Counsel for Applicant :- Raj Narayan, Atul Kumar Singh, Bijai Nath
Yadav, Prem Prakash Yadav**

Counsel for Opposite Party :- G.A., Shiv Sharan Tripathi

Hon'ble Siddharth, J.

1. Heard Sri Suresh Dhar Dwivedi, Advocate holding brief of Sri Atul Kumar Singh, learned counsel for the applicant; Sri Shiv Sharan Tripathi, learned counsel for the informant and learned A.G.A for the State.
2. There is allegation in the FIR that the informant is original resident of Aligarh and was working in Rajasthan. His daughter, the deceased and son, Shivam, were living with him and studying. Applicant and co-accused, Vijendra, who are residents of Aligarh, enticed away his daughter and on 26.12.2018 murdered her and threw her dead body near the railway station. On getting information on phone, he reached the railway station and identified dead body of his daughter. He did not lodge the report earlier because of fear of social ignominy. After post-mortem, he brought dead body of his daughter to Firozabad, where incident took place and he gave an application at police station on 28.08.2012 but the report was lodged only on 10.02.2019 by the police.
3. Counsel for the applicant submits that the applicant has been falsely implicated in this case. The deceased was having love affair with the

applicant and they had decided to marry in Arya Samaj Temple. The deceased called the applicant to Rajasthan on 22.12.2018 and on 23.12.2018 they came to district- Firozabad by train. The informant and his son came to know of their elopement and they had followed them and had badly beaten the deceased and the applicant. The deceased was strangled by *dupatta* by them and thrown on the railway line. He has submitted that it is a case of honour killing and applicant has been falsely implicated in this case. The victim was a major girl aged about 20 years.

4. He has further submitted that before the trial court dates are being fixed for evidence. There are 23 prosecution witnesses out of which only 3 have been examined before the trial court. The applicant is in jail since 22.05.2019 and has no criminal history to his credit. There is no possibility of earlier conclusion of trial.

5. Counsel for the informant has vehemently opposed the bail application and has submitted that the applicant is not entitled to be enlarged on bail since he has caused murder of daughter of informant. She was also subjected to rape prior to her murder and subsequent implication of applicant under Section 376 IPC has also been made.

6. He has further submitted that in the report of forensic science laboratory, Agra the traces of semen have been found on the panty of the deceased. Hence, the commission of offence of rape is clearly proved against the applicant.

7. Learned A.G.A has also opposed the submissions of counsel for the applicant and has submitted that the allegation against the applicant are quite serious and he does not deserves to be enlarged on bail. However it is admitted in the counter affidavit by the learned A.G.A that the applicant has no previous criminal history to his credit.

8. After hearing the rival contentions, it appears that there was consenting relationship of the deceased with the applicant. There is no reason on record why the applicant committed her murder. The incident in dispute took place on 23.12.2018. The application for lodging FIR was made on 28.12.2018 and it was registered only on 10.02.2019 by the police station concerned.

9. Keeping in view the fact that this is the first implication of the applicant and he is in jail since 25.02.2019 and only 3 prosecution witnesses out of 23 have been examined till date, applicant deserves to be enlarged on bail during the pendency of trial.

10. 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.

11. Let the applicant, Ankit, involved in Case Crime No. 18 of 2019, under Sections- 364, 302, 201 IPC, Police Station- Nagla Khengar, District- Firozabad, 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.

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

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

14. Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of one year.

15. Registrar (compliance) is directed to communicate this order to the trial Court for necessary compliance within ten days.

Order Date :- 16.10.2023

Rohit