

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43131 of 2022

Applicant :- Kamlesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Om Shiv, Anand Pati Tiwari

Counsel for Opposite Party :- G.A., Dharendra Kumar Verma

Hon'ble Sameer Jain, J.

1. Case called out in revised list. None present on behalf of the informant. However, learned AGA for the State is present.
2. Heard Sri Anand Pati Tiwari, learned counsel for the applicant and Sri R.N. Srivastava, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 254 of 2021, under Sections 302, 201, 34 IPC, Police Station Derapur, District Kanpur Dehat during pendency of the trial.
4. FIR of the present case was lodged against applicant and five others and according to the FIR co-accused Beeru and Sheelu have taken the wife of the informant on 02.11.2021 at about 01.30 PM in the afternoon and thereafter applicant along with other accused persons due to previous enmity committed her murder.
5. Learned counsel for the applicant submitted that only due to previous enmity, applicant has been made accused in the present matter and except the motive and enmity, there is no cogent evidence against the applicant on record. He further submits that even as per prosecution co-accused Beeru and Sheelu have taken the deceased from her home.
6. He further submits that actually the son of the applicant was made accused in the case of rape of the daughter of the informant and when his wife died due to drowning then only due to above noted enmity, applicant has been made accused in the present matter.
7. He further submits that apart from the present case and the case

of Section 376 IPC and POCSO Act, in which, victim of the case was daughter of the informant, there is no other case pending against the applicant. He further submits that even in case relates to Section 376 IPC final report has been submitted in favour of the applicant and charge-sheet was filed only against Rohit i.e. his son. He further submits that applicant in the present matter is in jail since 28.03.2022 i.e. for more than one and half years.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

10. Considering the argument advanced by learned counsel for the applicant and the fact that it is a case of circumstantial evidence and except motive, there is no evidence against the applicant on record and applicant is in jail for more than one and half years, in my view, applicant is entitled to be released on bail.

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

12. Let the applicant - **Kamlesh** 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.

13. 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.

14. 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 :- 29.11.2023

AK Pandey