

**Court No. - 69**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 49680 of 2021

**Applicant :-** Vijendra Singh Yadav

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** M.P.S. Chauhan, Abhishek Mayank

**Counsel for Opposite Party :-** G.A.

**Hon'ble Samit Gopal, J.**

1. List revised.

2. Heard Sri Abhishek Mayank, learned counsel for the applicant and Sri Devendra Nath Mishra, learned counsel for the State and perused the material on record.

3. This is second bail application of the applicant. The first bail application of the applicant was rejected by this Court vide order dated 26.08.2020 passed in Criminal Misc. Bail Application No. 6335 of 2020 (Vijendra Singh Yadav vs. State of U.P.).

4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Vijendra Singh Yadav**, seeking enlargement on bail during trial in connection with Case Crime No. 340 of 2018, Session Trial No. 609 of 2019, under Sections 302, 201, 120-B I.P.C., Police Station Atrauli, District Aligarh.

5. Learned counsel for the applicant argued that the first bail application of the applicant was rejected by this Court on the ground that D.N.A. report was awaited and as such it was observed that the Court does not find it a fit case to release the applicant at that stage. While placing Annexure-5 to the affidavit learned counsel has placed the report of D.N.A. profiling dated 22.09.2020 and has argued that the result and conclusion of the examination goes to show that the same did not yield any D.N.A. suitable for analysis and hence no opinion was given. The result of examination and conclusion is extracted herein below:-

*"The source of exhibit B (blood sample said to be of Mrs. Sharada Devi @ Rampyari) yielded a DNA profile. The source of exhibit A (soil containing few strands of hair said to be of the deceased) did not yield any DNA suitable for analysis, hence no opinion is herewith furnished."*

6. It is argued that the said report in any manner does not implicate the applicant in the present case. It is further argued while placing Annexure-6 to the affidavit that the trial in the present matter has started in which only Raja Ram the first informant was examined and he has not supported the prosecution case. The applicant has no criminal history as stated in para 16 of the affidavit and is in jail since 28.06.2019.

7. *Per contra*, learned counsel for the State opposed the prayer for bail but could not dispute the arguments as aforesaid.

8. After having heard learned counsel for the parties and perusing the record, it is evident that the first bail application of the applicant was rejected by this Court vide order dated 26.08.2020. The same reads as under:-

*"Heard Sri M.P.S. Chauhan, learned counsel for the applicant, Sri I.P.S. Rajpoot, learned AGA for the State and perused the material on record.*

*This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Vijendra Singh Yadav, seeking enlargement on bail during trial in connection with Case Crime No. 340 of 2018, Session Trial No. 609 of 2019, under Sections 302, 201, 120B I.P.C., registered at P.S. Atrauli, District Aligarh.*

*On 20.2.2020 the following order was passed by a co-ordinate Bench of this Court:*

*"Learned A.G.A. prays for and is granted two weeks' time to get D.N.A. report of the alleged heirs which are said to be of the deceased.*

*Put up this application on 19.3.2020 as a fresh case.*

*In the meantime learned A.G.A. may file counter affidavit."*

*Subsequently on 09.6.2020 another co-ordinate Bench has passed the following order:*

*"Perusal of order-sheet shows that vide order dated 20.02.2020 learned AGA was granted two weeks' time to get D.N.A. report of the alleged heirs which are said to be of the deceased. Learned AGA submits that due to COVID-19 Pandemic, he could not get the required report of DNA.*

*In view of above, let this matter be listed on 15.07.2020 as fresh before the appropriate Bench to enable the learned AGA to comply the order dated 20.02.2020. "*

*Subsequently the matter was taken up on 27.7.2020 and the following order was passed:*

*"Sri M.P.S. Chauhan, learned counsel for the applicant and Sri Manu Raj Singh, learned A.G.A. are present.*

*Learned A.G.A. seeks further ten days time to comply with the orders dated 20.2.2020 and 09.6.2020 of this Court.*

*As a last opportunity, ten days and no more time is granted to learned A.G.A. to comply the said orders.*

*Put up as fresh on 12.8.2020 before the appropriate Bench."*

*On 27.7.2020 this Court had granted time to learned A.G.A., as a last opportunity, to comply with the orders dated 20.2.2020 and 09.6.2020.*

*Today when the matter is listed in list of fresh cases, learned A.G.A. states that till date no D.N.A. report has been received by him as the said sample is still to be examined.*

*Heard learned counsel for the parties.*

*Learned counsel for the applicant argued that the first information report of the present incident has been lodged by Rajaram, the Chaukidar of village Kanakpur, police station Atrauli, district Aligarh, in which he stated that Km. Priti Yadav aged about 21 years who is the daughter of sister of one Vijendra Singh who is the resident of same village, was a girl of bad habits and as such her parents and other family members had taken her and left her at the house of Vijendra Singh on 23/24.06.2018 but is not seen since 29.6.2018. It is further stated in the F.I.R. that there is a general discussion in the village that the present applicant, who is the maternal uncle of Km.Priti Yadav along with his brother-in-law (Rajendra Singh Yadav), who is the father of Km. Priti Yadav, and other family members have murdered her and they along with one Dev Prakash Yadav and some other persons hatched a conspiracy and had buried her in the field of Maze of Ved Prakash. It is further alleged in the F.I.R. that on the information the police went to the said field to inquire into it and got dug at a suspected place from where smell of decomposed human body was coming and some hairs of female were found. It is*

further stated that the said persons are absconding from their houses from the date of incident, but during the course of digging the dead body could not be recovered. It is further stated in the F.I.R. that there is a general discussion in the village that around 2-3 days prior the dead body was exhumed and was got disappeared by the accused persons.

Learned counsel for the applicant argued that the applicant is the maternal uncle of the deceased and Rajendra Singh Yadav, who is also made an accused in the present F.I.R., is the father of the deceased. It is argued that there is no evidence coming forth to substantiate the allegations made in the F.I.R. that the deceased girl was left at the house of the applicant. While relying upon para-6 of the affidavit, learned counsel for the applicant has argued that Km. Priti Yadav was never left by her parents and other family members at the house of the applicant.

It is further argued while placing the statement of Rohan Singh, Resham Pal Yadav, village Pradhan of village Dinora and Smt. Tarawati, copies of which have been annexed as annexure no. 2 to the affidavit, that the said statement does not in any manner conclusively establish the participation of the applicant in commission of crime and his implication in the present case is false as the said witnesses have stated in their statement recorded under Section 161 Cr.P.C. Further it is argued that Suresh Sharma has stated that there is a general discussion in the village that the deceased was seen at the maternal house of her mother.

Further Rohan Singh, Resham Pal Yadav and Smt. Tarawati have stated that the deceased girl, who was involved in some love affair with some person and had also eloped with that person and had come back. While placing the statement of Satish Kumar recorded under Section 161 Cr.P.C., copy of which has been annexed as annexure no. 3 to the affidavit, learned counsel for the applicant has argued that the said witness has also stated that there is a general discussion in the village that the dead body had been buried in the field of Ved Prakash which was subsequently exhumed and concealed at some other place.

Netrapal Yadav and Rajeshwar, whose statement are also annexed as annexure no. 3, have also stated the same fact as that of Satish Kumar. It is argued that there is no evidence at all against the applicant and even there is no witness coming forward to conclusively state the fact that the deceased was living in the house of the applicant. It is stated that the applicant has no criminal history as mentioned in para-12 of the affidavit and is in jail since 28.6.2019.

Per contra, learned A.G.A. opposed the prayer for bail and argued that till date the dead body of the deceased Km. Priti Yadav has not been recovered. The report of D.N.A. is still awaited as the same was sent to Agra from where it was returned back as the facility for testing D.N.A. was not available there and now, the same has been sent to Hyderabad along with test sample of hairs of mother of the deceased for D.N.A. examination. It is argued that the matter is serious in nature and therefore, the bail of the applicant should be rejected.

After having heard learned counsel for the parties and perused the record, it is apparent that a girl aged about 21 years is said to have been shifted from her house to the house of the applicant which is stated by Rajaram the Chaukidar of the village, who is the first informant, who stated that the girl was living in the same village. The report of D.N.A. is still awaited which would conclusively establish whether hairs as received from the place were of the deceased or not.

Looking to the facts and circumstances of the case and well as nature of evidence and gravity of the offence and specially keeping in view the fact that D.N.A. report is still awaited, I do not find it to be a fit case to release the applicant on bail at this stage.

Therefore, the bail application is rejected.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

The computer generated copy of such order shall be self attested by the counsel of the party concerned.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing."

9. The D.N.A. report of the sample does not establish any link with the recovered and the source sample.

10. 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.

11. Let the applicant- **Vijendra Singh Yadav**, 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.

12. 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.

13. The bail application is **allowed**.

14. Further the trial court is directed to expedite the trial and conclude the same as early as possible without granting undue adjournment to either of the parties.

**Order Date :- 20.11.2023**

AS Rathore

(Samit Gopal,J.)