

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52819 of 2021

Applicant :- Nitin

Opposite Party :- State Of U.P And Another

Counsel for Applicant :- Udai Chandani,Akhilesh Kumar Tiwari,Araf Khan,Ashutosh Singh,Sonakshi Arora

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Araf Khan, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 0047 of 2021, under Section 302 IPC, Police Station Chhata, District Mathura during pendency of the trial.
3. FIR of the present case was lodged against applicant and according to the FIR applicant was son of the brother-in-law of the informant and on 16.02.2021 he along with the daughter of informant had gone to the field and committed her murder. It is further mentioned in the FIR that daughter of the informant was aged about 16 years.
4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and except the evidence of last seen and recovery of blood stained knife there is no other evidence against the applicant on record.
5. He further submits that although informant in the FIR stated that applicant and deceased had gone to field and thereafter applicant committed her murder but when his statement under Section 161 Cr.P.C. was recorded then he stated that in the field applicant was also present along with his daughter and thereafter applicant left the field and subsequently her dead body was found at the place where applicant was sitting with the deceased. Therefore, it appears that informant subsequently developed the story in his statement recorded under Section 161 Cr.P.C.
6. He further submits that till date the alleged recovered knife

could not be connected with the instant crime. He further submits that present case is case of circumstantial evidence and applicant is not having any criminal history and he is in jail since 18.02.2021 i.e. for more than two and half years.

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

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

9. Although, from perusal of the FIR, it appears that as per allegation applicant had gone along with deceased to the field but from the statements of the witnesses recorded during investigation, it appears that applicant and deceased after departure from home arrived at the field and they were talking with each other in the field and thereafter applicant went away and subsequently dead body of the deceased was found at the place where they were making conversation, therefore, it appears that there is development in the story at subsequent stage of investigation.

10. Further, even as per the witnesses applicant and deceased were talking and they witnessed them, therefore, it is hard to believe at this stage that applicant could commit the murder of the deceased in front of applicant and other witnesses.

11. Further, except the above mentioned circumstance, the another circumstance against the applicant is that from his possession one blood stained knife was recovered but till date, the alleged recovered knife could not be connected with the instant crime and even merely on the basis of recovery of such knife at this stage prima facie it cannot be said that applicant committed the murder of the deceased. Further, applicant is not having any criminal history and he is in jail since 18.02.2021 i.e. for more than two and half years.

12. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

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

14. Let the applicant - **Nitin** 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.

15. 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.

16. 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 :- 30.10.2023

AK Pandey