

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39734 of 2023

Applicant :- Naushad

Opposite Party :- State of U.P.

Counsel for Applicant :- Adesh Kumar

Counsel for Opposite Party :- G.A.,Sunil Kumar Tiwari

Hon'ble Sameer Jain,J.

1. Heard Sri Kamal Krishna, learned Senior Advocate assisted by Sri Adesh Kumar, learned counsel for the applicant, Sri Sunil Kumar Tiwari, learned counsel for the informant and Sri R.N. Srivastava, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 195 of 2023, under Sections 302, 120-B IPC, Police Station- Partapur, District- Meerut, during pendency of the trial in the court below.
3. FIR of the present case was lodged against four accused persons (non applicant) on 01.06.2023 and according to the FIR, on 30.05.2023, the husband of the deceased, who had gone to District Court, Meerut, did not return back to his home.
4. It is further mentioned in the FIR that he was having enmity with the nominated accused persons and earlier also they have threatened him to kill and on 31.05.2023 dead body of the husband of the informant was found in the field. It is further mentioned in the FIR that nominated accused persons after taking him for compromise, committed his murder.
5. Learned counsel for the applicant submitted that applicant was not named in the FIR and during investigation, his complicity was revealed. He further submitted that only evidence against the applicant is of last seen and CDR report of the applicant and co-accused Irfan but last seen evidence is based on the statement of the informant and brother of the deceased, which does not appears to be convincing. He further submitted that if applicant was also last seen along with the deceased and other accused persons then he would have definitely be nominated in the FIR.

6. He further submitted that as per the prosecution, when applicant was arrested then he confessed his guilt and on his pointing out a rope was recovered. He further submitted that even merely on the basis of location of the applicant through his CDR, it cannot be said that applicant also involved in the instant crime, especially when there is no other cogent evidence against him on record.

7. He further submitted that deceased was not a man of good character and he was also facing criminal trial under Section 302 IPC, therefore, possibility cannot be ruled out at this stage that some other person due to enmity might have committed his murder.

8. He further submitted that co-accused Irfan has been released on bail by this Court and case of applicant is at par with him.

9. He further submitted that applicant is not having any criminal history and he is in jail in the present matter since 04.06.2023.

10. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that from the statement of the informant and the brother of the deceased, it appears that applicant was last seen alongwith the deceased and as per the CDR report also, it appears that last location of the applicant was found at the place of incident on the date of incident and, therefore, at this stage, it cannot be said that applicant was not involved in commission of the instant crime but both the counsels could not dispute the fact that applicant was not named in the FIR and co-accused Irfan has been released on bail by this Court and case of applicant is at par with him.

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

12. It is a case of circumstantial evidence and during investigation, prosecution come with a case that against the applicant there was evidence of last seen and from the CDR report, his location was found at the place of incident on the date of incident but in the FIR, informant did not state that deceased by phone informed her that he was going alongwith the applicant and others for the matter of compromise and further the statement of the brother of the deceased also does not inspire any confidence and I find force in the argument advanced by learned counsel for the applicant that merely on the basis of CDR report alone, at this stage it cannot be said that applicant is the person, who involved in the murder of the husband of the informant. Further, applicant is not named in the

FIR.

13. Further, from the record, it also reflects that deceased was also having criminal history and he was facing trial under Section 302 IPC.

14. Further, applicant is not having any criminal history and he is in jail since 04.06.2023.

15. Further, co-accused Irfan has been released on bail by this Court and case of applicant is at par with him.

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

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

18. Let the applicant- **Naushad** 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.

19. 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.

20. 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 :- 7.11.2023

KK Patel