

Neutral Citation No. - 2023:AHC:214138

Reserved On:- 03.11.2023

Delivered On:- 07.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41360 of 2023

Applicant :- Arbaz

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Singh

Counsel for Opposite Party :- G.A., Kailash Prasad Pandey

Hon'ble Siddharth, J.

1. Heard Sri Rajesh Kumar Singh, learned counsel for the applicant, Sri Kailash Prasad Pandey, learned counsel for the informant and the learned AGA for the State.
2. The instant bail application has been filed on behalf of the applicant, Arbaz, with a prayer to release him on bail in Case Crime No. 95 of 2023, under Sections- 302, 201, 34 IPC, Police Station- Mahavan, District- Mathura.
3. There is allegation in the FIR that on 27.04.2023 at about 05:30 p.m son of informant, Shamim, aged about 22 years had gone from the house but when he did not returned late in the night his search was made but nothing could be known about him. On 29.04.2023 on the information of recovery of an unclaimed dead body, son of applicant was identified in mortuary by informant and last rites were performed. FIR was lodged on 01.05.2023 against unknown accused.
4. Learned counsel for the informant submits that in initial statement of informant no one was named. The brother of deceased, Monu, stated

that on 01.05.2023 he saw the deceased standing with accused persons in drunken state. In the second statement of informant he has adopted the facts stated in the statement of his son, Monu. Three persons including applicant were arrested on 02.05.2023. In the post-mortem report of deceased cause of his death was found to be asphyxia as a result of strangulation. In the confessional statement of co-accused, Shiva @ Mohd. Umar, recorded on 02.05.2023 he has admitted commission of alleged crime and has named the applicant. He has submitted that statement of co-accused cannot be read against the applicant. Further six months ago a dispute took place between the family of co-accused and informant and they were challaned under Section 107/116 Cr.P.C. He has submitted that except the extra-judicial confession of co-accused, Shiva @ Mohd. Umar. There is nothing against applicant. Being friend of co-accused, Shiva @ Mohd. Umar, he has been falsely implicated. Applicant has been falsely implicated in this case and is in jail since 02.05.2023.

5. Learned counsel for informant has vehemently opposed the bail application and has submitted that investigating officer has collected the call details of applicant, deceased and co-accused persons. The relevant C.D has been brought on record which shows that deceased had talked to applicant on 27.04.2023 between 17 hours to 19 hours five times. Mobile phone of deceased was working till 19.57.06 hours and thereafter it stopped responding. Applicant, Arbaz, has talked with co-accused, Sahil and Shiva @ Mohd. Umar, also on the date of incident at about time when deceased left his house.

6. Learned A.G.A has filed counter affidavit and has brought on record the statement of the wife of deceased, Heena Parveen, wherein she has stated that applicant and co-accused, Shiva @ Mohd. Umar and Sahil, had dispute with deceased regarding money of *gutkha*. Prior to that also dispute had taken place between her husband and accused persons. On the

date of incident deceased was taken by applicant and co-accused on the pretext of taking him to dinner but thereafter he was murdered. Her brother-in-law, Monu, and other villagers have seen the deceased in the company of accused persons.

7. After hearing the rival contentions, this Court does not find any ground for granting bail to the applicant at this stage.

8. The bail application is accordingly, rejected.

9. The trial court is directed to conclude the trial against the applicant as expeditiously as possible, preferable within a period of one year from the date of production of certified copy of this order.

Order Date :- 07.11.2023

Rohit