

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44381 of 2023

Applicant :- Parvez

Opposite Party :- State of U.P.

Counsel for Applicant :- Vivek Kumar Singh, Mayank Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Vivek Kumar Singh, learned counsel for the applicant and Sri Ajeet Kumar Madhesiya, learned brief holder for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 174 of 2023, under Sections 302, 201, 34 IPC, Police Station- Tronica City, District- Ghaziabad, during pendency of the trial in the court below.

3. FIR of the present case was lodged against applicant and co-accused Himanshu on 21.03.2023 and according to the FIR, on 17.03.2023 applicant and co-accused Himanshu had taken the husband of the informant from the house and thereafter on 21.03.2023 his dead body was found.

4. Learned counsel for the applicant submitted that totally on the basis of false evidence of last seen, applicant has been made accused in the present matter. He further submitted that although, as per the prosecution, deceased had gone alongwith the applicant and co-accused Himanshu on 17.03.2023 but FIR was lodged on 21.03.2023 i.e. after four days after recovery of the dead body of the deceased and in the meantime on 19.03.2023 a missing report was lodged by the informant herself but in the missing report, she did not disclose that applicant and co-accused Himanshu had taken the deceased on 17.03.2023.

5. He further submitted that during investigation, Investigating Officer procured a CCTV footage from a *Jan Seva Kendra* but from the CCTV footage, it is only reflected that applicant and co-accused Himanshu had came alongwith the deceased but from the CCTV footage it could not be reflected that all the three after that had gone simultaneously.

6. He further submitted that when the statement of the owner of the *Jan Seva Kendra* namely Washid was recorded then he also only stated that applicant and co-accused Himanshu had come alongwith the deceased and he did not state that all the three thereafter had gone simultaneously and therefore, at this stage it cannot be said that there is evidence of last seen against the applicant.

7. He further submitted that during post-mortem doctor did not disclose the duration and time of death of the deceased and therefore, even if the deceased had gone along with the applicant and co-accused Himanshu on 17.03.2023 then also it cannot be said that applicant committed his murder as there is no evidence of proximity of time between his death and evidence of last seen.

8. He further submitted that applicant is not having any criminal history and he is in jail since 22.03.2023.

9. Per contra, learned brief holder although, opposed the prayer for bail but could not dispute the fact that there is no evidence on record, which can show that from the *Jan Seva Kendra*, applicant and co-accused Himanshu had gone alongwith the deceased. He further could not dispute the fact that the duration and time of death of the deceased has not been mentioned in the post-mortem report and FIR of the present case was lodged after four days.

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

11. It is a case of circumstantial evidence and it appears that only evidence against the applicant is of last seen and although, according to the FIR, applicant had taken the deceased alongwith co-accused Himanshu on 17.03.2023 and thereafter dead body of the deceased was found on 21.03.2023 but in the post-mortem report of the deceased duration and time of death has not been mentioned, therefore, at this stage, there is no evidence on record, which can show the proximity of time between evidence of last seen and death of the deceased

12. Further, applicant is not having any criminal history and he is in jail since March, 2023.

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

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

15. Let the applicant- **Parvez** 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.

16. 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.

17. 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 :- 18.10.2023

KK Patel