

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40796 of 2023

Applicant :- Ramcharan Yadav Home Guard

Opposite Party :- State of U.P.

Counsel for Applicant :- Rafeek Ahmad Khan

Counsel for Opposite Party :- G.A.,Narendra Kumar

Hon'ble Rajeev Misra,J.

1. Heard Mr. Rafeek Ahmad Khan, the learned counsel for applicant, the learned A.G.A. for State and Mr. Narendra Kumar Tiwari, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Ramcharan Yadav, Home Guard seeking his enlargement on bail in Case Crime No. 140 of 2022, under Sections 364, 302, 201 IPC, Police Station-Kulpahar, District-Mahoba during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 25.12.2021, a delayed FIR dated 09.06.2022 was lodged by first informant-Smt. Durji (widow of the deceased) and was registered as Case Crime No. 140 of 2022, under Sections 364, 302 IPC, Police Station-Kulpahar, District-Mahoba . In the aforesaid FIR, 3 persons namely - (1) Kalicharan Vishwakarma, (2) Vishanath Raikwar and (3) Ramcharan Yadav, Home Guard (applicant herein) have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that the deceased went in the company of the named accused for executing the sale deed. The FIR further records that a sum of Rs. 2 lacs and 50 thousand was looted from the possession of the husband of first informant and thereafter, he was put to death.

6. It is apposite to mention here that prior to the FIR dated 09.06.2022, a missing person report was lodged on 01.01.2022 wherein it has been stated that the husband of the first informant went alone on his motor cycle (Glammer) bearing Registration No. UP 14 AP 5347.

7. After above-mentioned FIR was lodged, Investigating Officer

proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. Applicant-Ramcharan Yadav was arrested on 29.04.2023. On his pointing, skeleton of the deceased was recovered on 30.04.2023. A Motor Cycle bearing Registration No. UP 14 AP 5443 was also recovered from the house of the applicant, which admittedly does not belong to the applicant. The other 2 named accused namely (1) Kalicharan Vishwakarma and (2) Vishanath Raikwar were also arrested. The confessional statements of the accused including the applicant under Section 161 Cr.P.C. were also recorded. With reference to above, from the case diary, the learned A.G.A. submits that the role of causing death of deceased is attributable present applicant by administered him some poisonous substance and thereafter, assaulting him with a stone. On the basis of above and other material collected by Investigating Officer during the course of investigation he came to the conclusion that complicity of present applicant alone is established in the crime in question. Accordingly, Investigating Officer submitted the charge sheet dated 28.06.2023 whereby applicant has been charge sheeted under Sections 364, 302, 201 IPC whereas the other 2 named accused have been exculpated.

8. Learned counsel for applicant contends that though the applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. A parallel was drawn in between the first information report and the missing person report, copies of which are on record as Annexures 1 and 2 of the affidavit filed in support of the bail application. On the basis of above, the learned counsel for applicant submits that the prosecution itself is not clear about the story which it wants to establish against the applicant. It is then contended that recovery of the motor cycle from the premises of applicant is not the same as mentioned in the missing person report. No FSL report has yet been submitted with regard to the skeleton alleged to have been recovered on the pointing of applicant. On the above premise, he submits that applicant is liable to be enlarged on bail.

9. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 29.04.2023. As such, he has undergone more than 6 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the

custodial arrest of the applicant during the pendency of trial. On the above premise, he submits that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that the deceased was put to death in the presence of 2 other named accused namely (1) Kalicharan Vishwakarma and (2) Vishanath Raikwar. These 2 witnesses have clearly established the complicity of present applicant in the crime in question. The aforesaid named accused, therefore, said to be eye witness of the occurrence. Up to this stage, there is no such material on record on the basis of which, the credibility or the reliability of the aforesaid witnesses could be discarded. The recovery of the skeleton of the deceased on the pointing of present applicant is by itself a sufficient circumstance to infer the guilt of applicant in the crime in question. It is thus urged that no sympathy be shown by this Court in favour of applicant.

11. When confronted with above, the learned counsel for applicant could not overcome the same.

12. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, complicity of accused, accusations made coupled with the fact that skeleton of the deceased was recovered on the pointing of applicant, the other 2 named accused (1) Kalicharan Vishwakarma and (2) Vishanath Raikwar who were present at the time and place of occurrence have attributed the role of causing the death of deceased to the present applicant, up to this stage, there is no such material on record on the basis of which, the credibility or the reliability of aforementioned 2 witnesses could be discarded, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

13. As a result, present application for bail fails and is liable to be rejected.

14. It is accordingly **rejected**.

Order Date :- 30.10.2023/Vinay