

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 55861 of 2021

Applicant :- Banwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Upendra Kumar Pushkar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Kamaldev Singh, Advocate holding brief of Sri Upendra Kumar Pushkar, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 283 of 2020, S.T. No. 2457 of 2020, under Sections 364, 302, 201, 34 IPC, Police Station Atrauli, District Aligarh during pendency of the trial.

3. FIR of the present case was lodged against applicant and two others on 17.07.2020 and according to the FIR on 16.07.2020 at about 6.30 AM in the morning applicant and two other accused persons have taken the nephew of the informant from the house of the informant and thereafter some witnesses informed the informant that they also witnessed the applicant and other accused along with the nephew of the informant. It is further mentioned in the FIR that informant is having suspicion that after kidnapping his nephew applicant and other accused persons have concealed him.

4. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Section 364 IPC but it is alleged that when applicant was arrested then he confessed his guilt and on the pointing out of the applicant, dead body of the deceased was recovered from the well. He further submits that totally on the basis of false allegation, applicant has been made accused in the present matter.

5. He further submits that from the perusal of the post mortem report dated 18.07.2020, which was conducted at 5.10 PM it appears that deceased died about 3-4 days before, therefore, post mortem report totally belies the version of the FIR, which states that on 16.07.2020 applicant and others had taken the deceased

and from the post mortem report, it appears that deceased had already died even before 16.07.2020.

6. He further submits that it appears that after recovery of the dead body subsequently on the basis of false allegation that on the pointing out of the applicant dead body of the deceased was recovered applicant has been made accused in the present matter. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 18.07.2020 i.e. for more than three years.

7. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that it is a case of circumstantial evidence and applicant is in jail for more than three years and post mortem report totally belies the story narrated by the informant in the FIR.

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

9. Considering the fact that it is a case of circumstantial evidence and post mortem report of the deceased belies the allegation made against the applicant in the FIR and applicant is in jail for more than three years, in my view, applicant is entitled to be released on bail.

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

11. Let the applicant - **Banwari** 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.

12. 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.

13. 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 :- 3.11.2023

AK Pandey