

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41230 of 2023

Applicant :- Prem Shankar

Opposite Party :- State of U.P.

Counsel for Applicant :- Bharat Singh

Counsel for Opposite Party :- G.A., Ram Sanehi Yadav

Hon'ble Dr. Gautam Chowdhary, J.

1. Case called out in the revised list. None has appeared on behalf of informant despite name of learned counsel appearing on his behalf is printed in the cause list.

2. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

3. Learned counsel for the applicant submits that applicant is innocent and has been falsely implicated in the present case. Learned counsel further submits that the F.I.R. was lodged by the informant alleging therein that on 06.06.2023 his elder brother, namely, Subhash went to his in-laws house along with his wife, Roni and on 08.06.2023 he received an information that Subhash had committed suicide by hanging and he made suspicion upon the applicant and his other family members for killing his elder brother and named all of them in the F.I.R. Learned counsel for the applicant further submits that in the F.I.R. it is alleged by the informant that on the information received regarding death of his brother when he reached in-laws' house of the deceased, the dead body of the deceased was taken by the police for conducting of postmortem, whereas, in the inquest proceedings the applicant and his other family members along with the informant were present and the applicant and informant were also the witness of inquest proceedings. Learned counsel for the applicant further submits that F.I.R. was lodged by the informant on 09.06.2023 at about 19:24 hours whereas applicant had himself submitted a written application to the police concerned on 08.06.2023 at about 11:20 a.m. informing regarding death of the deceased and this application is a part of general diary. Learned counsel for the applicant further submits that in the postmortem examination of the deceased the applicant was also made witness who identified the dead body of the deceased. Learned counsel for the applicant further submits that in the postmortem of the deceased two injuries, i.e., one lacerated wound of size 0.5 c.m.

x 0.3 c.m. on little finger of left hand and one abrasion of size 3.0 c.m. x 5.0 c.m. on left knee joint were found and blood was oozing from his mouth, nose and eyes and cause of death was found to be strangulation and hemorrhage due to asphyxia and hemorrhage. Learned counsel for the applicant further submits that general allegations have been made by the informant in the F.I.R. as well as in his statement recorded under Section 161 Cr.P.C. against the applicant and his all other family members, who are six in numbers, including his daughter who is the wife of the deceased and no specific allegation has been made against none of the accused. Learned counsel for the applicant further submits that there is no independent or eye witness of the incident and the applicant has falsely been implicated in the case only on the basis of suspicion. Learned counsel for the applicant further submits that in the F.I.R. no motive has been assigned against any of the accused including the applicant for killing of the deceased, whereas the informant in his statement recorded under Section 161 Cr.P.C. before the police has cooked up the prosecution story by alleging that the applicant had borrowed the money from the deceased and when deceased asked the applicant to return the same the applicant refused the same and wife of the deceased who is daughter of the applicant was used to quarrel with her husband, i.e., the deceased. Thus, learned counsel for the applicant further submits that applicant has been implicated in the case falsely only on the basis of suspicion. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 11.06.2023, having no criminal history.

4. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence.

5. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

6. Let applicant-**Prem Shankar**, involved in Case Crime No. 213 of 2023, under Sections 302, 120-B I.P.C., Police Station Nakhasa, District Sambhal, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

7. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail in accordance with law.

8. The bail application is **allowed**.

Order Date :- 1.12.2023
Mustaqeem.