

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41397 of 2023

Applicant :- Gaurav

Opposite Party :- State of U.P.

Counsel for Applicant :- Varun Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Varun Singh, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 0166 of 2023, under Sections 147, 148, 149, 302 IPC, Police Station Bannadevi, District Aligarh during pendency of the trial.

3. FIR of the present case was lodged against applicant and four others and two unknown persons and according to the FIR co-accused Raj and Mukesh had taken the son of the informant at their factory where they along with their employees i.e. applicant and other co-accused persons assaulted him and thereafter they informed the police and on the information of the police informant arrived at spot and has taken his son to the hospital where he was declared dead.

4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and admittedly informant was not an eye witness and it appears that merely being employee of co-accused Raj and Mukesh, applicant has been roped in the present matter. He further submits that after three months Investigating Officer introduced an eye witness Vineet, who claimed that he accompanied the deceased but he also did not attribute any specific role to the applicant and only stated that applicant and other co-accused persons were also present along with co-accused Raj and Mukesh and he categorically stated that co-accused Mukesh assaulted the deceased through iron rod and thereafter this witness ran away.

5. He further submits that there is no evidence on record, which can show that applicant also participated in the incident and

committed the murder of the deceased along with co-accused Raj and Mukesh. He next submits that applicant is not having any previous criminal history except the history of Section 174-A IPC and he is in jail since 27.06.2023.

6. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

8. However, applicant is named in the FIR and alleged eye witness Vineet also disclosed that he was present at spot but it appears that he was employee of co-accused Raj and Mukesh and Raj and Mukesh were the person, who has taken the deceased at their factory.

9. Further, although alleged eye witness Vineet stated that at the time of incident applicant was also present along with co-accused Raj and Mukesh but he categorically stated that co-accused Mukesh assaulted the deceased through iron rod and he did not make any allegation against the applicant except the fact that applicant was present at spot along with other co-accused persons Raj and Mukesh.

10. The argument advanced by learned counsel for the applicant that applicant is the employee of co-accused Raj and Mukesh, therefore, he has been made accused in the present matter, cannot be completely brushed aside at this stage.

11. Further, applicant is not having any previous criminal history except the history of Section 174-A IPC and he is in jail since 27.06.2023.

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

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

14. Let the applicant - **Gaurav** 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.

15. 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.

16. 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 :- 28.10.2023

AK Pandey