

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41979 of 2023

Applicant :- Anoop Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Jagdish, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

List has been revised.

Heard Sri Satish Trivedi, learned Senior Counsel assisted by Sri Sheshadri Trivedi and Sri Ajay Kumar Jagdish, learned counsels for the applicant as well as the learned AGA for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant, **Anoop Singh**, with a prayer to release him on bail in **Case Crime No.29 of 2022, under Sections 302, 201, 120-B/34 IPC, Police Station Nakud, District- Saharanpur**, during pendency of trial.

There is allegation against the applicant in the FIR that son of the informant, Shubham, was having love affair with Deepika, daughter of the applicant, Anoop Singh and she married Shubham in temple. Thereafter, son of the informant, Shubham, was done to death. Number of persons were implicated. One of co-accused, Parikshit, applied for bail vide Criminal Misc. Bail Application No.47561 of 2022, which was rejected by this Court by following orders:-

"1. Heard Sri Sunil Kumar Tiwari, learned counsel for the applicant, Sri S. M. Faraz I. Kazmi, learned counsel for the informant and Sri Shiv Kumar, learned AGA for the State.

2. The instant bail application has been filed on behalf of the applicant, Parikshit, with a prayer to release him on bail in Case Crime No. 29 of 2022, under Sections- 302, 120-B, 201/34 IPC, Police Station- Nakur, District- Saharanpur, pendency of trial.

3. There is allegation in the FIR that son of the informant, namely, Shubham, was having love affair with Deepika, daughter of co-accused, Anoop Singh and she married Shubham in temple on 26.10.2021. Father of Deepika was annoyed with the deceased because he was against his marriage with his daughter. Several meetings took place between the parties but no settlement could be arrived at. Co-accused, Pankaj, called the deceased Shubham for getting a compromise done in the Court on 01.12.2021 but he never returned from Court. It was alleged that the accused persons have murdered Shubham. It is further alleged that Subham was taken by the accused persons to their village in Saharanpur and he was seen in

their company by many persons. Thereafter his phone became switched off.

4. Learned counsel for the applicant has submitted that the investigating officer has recorded the statement of number of witnesses who have admitted seeing the deceased in the company of the accused persons. He has submitted that the applicant is not named in the FIR nor his name has come in the statement of the witnesses. He has been implicated on the basis of information given by the informer. The applicant was arrested on 20.04.2022 and his confession before the police was recorded which has no evidentiary value. Co-accused, Pankaj, was arrested on 22.04.2022 but he has not named the applicant. Statement of Mukesh was recorded wherein he stated that accused, Anoop Singh, made extra-judicial confession before him that he along with co-accused, Pankaj, committed the murder of the deceased. Co-accused, Kulveer, was also arrested on 07.05.2022 and he confessed to the involvement of applicant in this case. Co-accused, Anoop Singh, was arrested on 02.06.2022 for his alleged involvement of the incident. He has submitted that the name of the applicant has surfaced in the confessional statements of co-accused person, Anoop Singh and Kulveer, before the police and apart from that there is no material against the applicant for implication in the present case.

5. Counsel for the informant has vehemently opposed the bail application. He has submitted that the recovery of shoes worn by the deceased was recovered from Manni farm house, Manak Mau on the pointing out of the applicant. Recovery memo has already been annexed as Annexure 7 to the bail application. In the statement of the applicant he has admitted causing murder of the deceased because he was not willing to leave Deepika.

6. He has further submitted that from the CDR details collected by the investigating officer, it is clear that the applicant was in continuous in touch with co-accused persons, Angad and Kulveer and his location was found in Manak Mau till night on 01.12.2021. These facts have been mentioned in C.D 24 dated 20.04.2022 placed before this Court. He has submitted that the deceased, Shubham, was done to death in Manak Mau from where recovery of his shoes have been made on the pointing out of the applicant. Neither the applicant nor co-accused person, Anoop Singh and Kulveer, had any reason to be present in Manak Mau since they are not resident of Manak Mau.

7. He has further submitted that from the place where the deceased was burned to death. Kada (bangle) whereon name of Subham Gujjar, Jalalpura, was carded was recovered and three burned stones were also recovered. A Kada of the deceased was identified by their uncles, Netrapal and Saurabh.

8. He has submitted that it is a case of honour killing of a boy who loved the daughter of one of the co-accused and the applicant is not entitled to be enlarged on bail. There is sufficient clinching evidence against him.

9. After hearing the rival contentions, this Court finds that it is not a fit case for enlarging the applicant on bail at this stage.

10. The bail application is accordingly, rejected.

11. Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of one year from the date of production of certified copy of this order. "

Learned counsel for the applicant has submitted that after rejection of bail application of co-accused, Parikshit, PW-1 and PW-2, who are father and brother of the deceased, have been examined by the trial court. They have not supported the prosecution case and have been declared hostile. Before the trial court only three prosecution witnesses out of 10 have been examined. The applicant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 28.2.2022. In case, the applicant is released on bail, he will not misuse the liberty of bail.

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 deserves any indulgence. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant; keeping in view uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of **Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022 and considering 5-6 times overcrowding in jails over and above their capacity by under trials** and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

The court below is directed to conclude the trial against the applicant, as expeditiously as possible, preferably within a period of one year.

The Registrar (Compliance) of this Court is directed to communicate this order to the court concerned within 10 days.

Order Date :- 16.11.2023
Ruchi Agrahari