

Neutral Citation No. - 2023:AHC:204425

Reserved On:- 17.10.2023

Delivered On:- 26.10.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42230 of 2023

Applicant :- Muslim

Opposite Party :- State of U.P.

Counsel for Applicant :- Vidit Narayan Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

1. Heard Sri Vidit Narayan Mishra, learned counsel for the applicant and Sri C.L. Singh, learned A.G.A. for the State and perused the material on record.

2. The instant bail application has been filed on behalf of the applicant, Muslim, with a prayer to release him on bail in **Case Crime No. 107 of 2023, under Sections 302, 201 IPC, Police Station- Rabupura, District- Gautam Buddh Nagar**, during pendency of trial.

3. Co-accused, Akib, has been directed to be enlarged on bail vide order dated 26.10.2023 in Criminal Misc. Application No. 31198 of 2023 by the following order:-

“1. Heard Sri R.P.S. Chauhan, learned counsel for the applicant; Sri Chandra Bhan Dubey, learned counsel for informant as well as the learned AGA-I for the State and perused the material placed on record.

*2. The instant bail application has been filed on behalf of the applicant, Akib, with a prayer to release him on bail in **Case Crime No. 107 of 2023, under Sections 302, 201 IPC, Police Station- Rabupura, District- Gautam Buddh Nagar**, during pendency of trial.*

3. There is allegation in FIR that brother of the informant, Aflatun, was taken away from his house on 04.05.2023 by co-accused, Muslim and Akib, the applicant, but his brother did not returned. Applicant and co-accused, Muslim, also expressed ignorance about him. Missing report was lodged, but no action was taken. On 08.05.2023, informant received information that dead body of his brother is lying in jungle. The informant alleged that he had seen deceased, applicant and co-accused, Muslim, on 04.05.2023 at 6:00 pm, near Dhola Kunwan, Kurebroad. Witness, Abbas, has also seen them on the same place at 7:00 pm. He expressed apprehension that applicant and co-accused have caused murder of his brother.

4. Learned counsel for the applicant has submitted that it is a case of false implication of the applicant. It is alleged in FIR that applicant and co-accused, Muslim, came to the house of his deceased brother, Aflatun. On 14.05.2023 on 4:30 pm, but his wife, Kallo, has stated in her statement before police that on 04.05.2023, her husband, Aflatun, had gone in the evening to consume liquor like the other days on the call made by co-accused, Muslim, on phone but thereafter, he did not returned. She has further stated that 15 days earlier co-accused, Muslim, had came to her house and was talking to her when her husband, Aflatun, came and because of suspicion he quarrelled with co-accused, Muslim, what had happened thereafter she does not knows. Learned counsel for applicant has submitted that there is no reliable evidence against him except the evidfence of last seen. There are vital contradictions in allegations in FIR and the statement of the wife and son of the deceased, Shahid. The statement of Abbas, who is witness of last seen is not corroborated from any other evidence. No incriminating material has been recovered from the applicant. The CDR details collected by the investigating officer regarding mobile phone of co-accused, Muslim, and deceased have not been certified as per Section 65-B of the Evidence Act, his case is different from co-accused, Muslim. The applicant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 12.05.2023. Learned counsel for applicant has relied upon the following judgments in the cases of **Krishna Vs State(2008) 15 SCC 430 Para15; Raju@ Rajendra Prasad Vs. State of Rajasthan and Babu Vs. State of Kerala (2010) 9 SCC** in support of his case he has submitted that the Apex Court has held that in the case of circumstantial evidence, the circumstances taken cumulatively it form a chain so complete that there is no escape from the conclusion that in all human probability only the accused committed the alleged offence only then implication of an accused can be justified.

5. Learned counsel for informant has vehemently opposed the prayer for bail of applicant and has submitted that there is sufficient evidence against the applicant in the form of last seen and statements of the witnesses pointing out to his implication in the present case.

6. Per contra learned A.G.A. has also 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.

7. After hearing the rival contentions, this Court finds that there are uncorroborated statements of witnesses making out a case of last seen against the applicant. No incriminating material has been recovered from applicant. Charge-sheet has been submitted in this case on 21.07.2023. Trial will take much time to conclude.

8. 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 the 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 trial; 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.

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

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

4. This Court finds that the case of the applicant is different from co-accused, Akib. In the statement of the wife of the deceased, Kallo, it has come that the applicant used to frequent the house of the deceased in his absence and dispute had also taken place between the deceased, Aflatun and applicant, when the applicant was found talking to the wife of the deceased in his absence in his house. Call details collected by the investigating officer show that the applicant had not talked to co-accused, Akib, from his mobile phone prior to the date of incident. He only talked to him seven times after the date of incident dated 04.05.2023 on 07.05.2023. The investigating officer found that the co-accused, Akib, never talked to the deceased on his mobile phone. It has also come in the

CDR report that applicant talked to the deceased on his mobile phone six times on 01.05.2023, once on 02.05.2023, twice on 03.05.2023 and once on 04.05.2023 i.e., the date of incident at 04:20 pm. The time of incident is alleged to be around 4:30 pm which shows that applicant called the deceased on his mobile phone on 4:20 pm. There is sufficient evidence against the applicant for implicating him in this case.

5. The argument of the learned counsel for applicant that the call details recovered by the investigating officer has not been certified as per Section 65-B of the Evidence Act has no merit since the **Apex Court in the case of Arjun Panditrao Khotkar Vs. Kailash Kushanrao, Gorantyal and others, 2020 (7) SCC 1** has held that such a certificate can also be produced by the prosecution at the time of trial.

6. The bail application is accordingly, **rejected**.

7. The trial court is directed to conclude the trial against the applicant as expeditiously as possible, preferably within a period of one year from the date of production of certified copy of this order.

Order Date :-26.10.2023

Abhishek