

Neutral Citation No. - 2023:AHC:201213

Reserved On:- 13.10.2023

Delivered On:- 17.10.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43650 of 2023

Applicant :- Nepal Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Vashistha

Counsel for Opposite Party :- G.A.,Deepk Kumar Tripathi

Hon'ble Siddharth,J.

1. Heard Sri Ajay Kumar Vashistha and Shri Sahmsher Bahadur Maurya, learned counsel for the applicant; Sri Deepak Kumar Tripathi, learned counsel for informant as well as the learned AGA for the State and perused the material placed on record.
2. The instant bail application has been filed on behalf of the applicant, **Nepal Singh**, with a prayer to release him on bail in **Case Crime No. 79 of 2023, under Sections 302, 201, 34, 120B IPC, Police Station Sahawar, District- Kasganj**, during pendency of trial.
3. There is allegation in FIR that on 12.08.2023 at about 7:00 pm, the informant and his brother, Dipu and his father, Srinivas and Ram Ji Lal, were present on their temporary residence, when the applicant, Nepal Singh, alongwith co-accused, Sahab Singh, Kehri Singh, Chakrapal and Brijesh and two unknown accused came and took his father, Srinivas and Ram Ji Lal on motorcycle alongwith them to panchayat regarding cultivation. In the way they dropped Ram Ji Lal and took his father alongwith them. Today i.e., 13.03.2023, dead body of the father of the informant was found besides the road it was alleged that there is dispute regarding cultivation with the accused persons and they have caused the murder of his father.
4. Learned counsel for the applicant has submitted that the land of applicant was acquired for construction of highway and compensation was received by the applicant and he purchased 43 bighas of land from the same from a person of Jatav community 18 years ago. Three years ago his land was purchased by one, Srinivas Singh son of Hodal Singh. The applicant received the sale consideration of Rs. 27 lakhs from Srinivas Singh. The applicant's wife has instituted a civil suit for cancellation of the aforesaid sale deed executed by applicant in favour of Srinivas being original suit No. 149 of 2022. The cheque given by Srinivas to the applicant as sale consideration for the purchase of the land of applicant had been dishonoured and applicant has filed a complaint No. 2729 of 2022 against Srinivas under Section 138 of Negotiable Instruments Act. The applicant is aged about 80 years and suffering from ailments. He was implicated in this case falsely, but nothing incriminating was recovered from him. He has submitted that it is a case of circumstantial evidence, no one has seen incident. Name of co-accused, Sahab Singh, has been exonerated by the investigating officer. Hence, the prosecution story is doubtful. On the basis of planted recovery of a car and one danda from possession of three accused, namely, the applicant, co-accused, Brijesh and Chakrapal, the applicant has been implicated. Co-accused, Brijesh and Kehari Singh, have already been enlarged on bail by this Court vide Bail Application Nos.

22760/2023 and 32559/2023. The applicant has sufficient assets in his village and will not abscond from the proceedings of trial. Other co-accused, namely, Ram Chandra Yadav, Pappu Yadav, Rajpal Yadav and Vijendra Yadav have also been enlarged on bail and their bail orders have been placed before this Court. The applicant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 15.03.2023. The trial in the aforesaid case is not likely to be concluded in near future.

5. Learned A.G.A. and learned counsel for informant have vehemently opposed the prayer for bail of applicant and placed before this court copy of statement of the applicant recorded before investigating officer wherein he has admitted that he executed sale deed in favour of deceased, Srinivas, after taking Rs. 10 lakhs in cash and cheque of Rs. 17 lakhs was dishonoured and he was demanding Rs. 17 lakhs from Srinivas who was not paying the aforesaid amount. He owned Rs. 31 lakhs in all to the applicant. Applicant hatched a conspiracy alongwith the co-accused persons, who have been enlarged on bail, to eliminate Srinivas, so that his possession is removed from the plot in dispute and thereafter the plan of murder of Srinivas was executed. He has admitted taking the deceased in a car and hitting him on his head and thereafter other persons beating him by different weapons.

6. After hearing the rival contentions, this Court finds that although bails were granted to all the co-accused by coordinate Benches of this Court, but there was no motive for the other co-accused to commit the alleged offence. The motive for committing the alleged offence can only be assigned to the applicant. The applicant admittedly executed sale deed in favour of deceased taking Rs. 10 lakhs in cash and 17 lakhs by way of cheque. It is on record that the cheque given by the deceased to the applicant was dishonoured and applicant has filed criminal complaint No. 2729/2022, under Section 138 of N.I. Act against the deceased. On the same ground the Original Suit No. 149/2022 was instituted by the wife of the applicant praying for cancellation of the sale deed executed in favour of deceased since cheque given in lieu of sale consideration by the deceased had been dishonoured and therefore, the sale deed have become void. She also sought decree of injunction against the deceased from taking possession over property in dispute. The deceased despite having sale deed in his favour was not real owner of land. His sale deed was void, but was in illegal possession of the land for which suit was instituted by wife of applicant.

7. In view of above consideration, it is clear that despite being case of circumstantial evidence, the applicant had sufficient motive to eliminate the deceased, with the help of co-accused.

8. The bail application is **rejected**.

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

Order Date :- 17.10.2023

Abhishek