

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 43817 of 2023

**Applicant :-** Nitish Pathak

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Ram Mani Upadhyay, Sangam Lal

Kesharwani, Santosh Ratan Pandey, Sarvjeet Kumar, Sunil Kumar Upadhyay

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain, J.**

1. Sri Sangam Lal Kesarwani, learned Advocate submits that he has filed his power on behalf of the applicant in the office of this Court on 13.10.2023 and, therefore, his name could not be shown in the cause list.

2. Heard Sri Sangam Lal Kesarwani, Sri Ram Mani Upadhyay, Sri Sunil Kumar Upadhyay learned counsels for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA, for the State.

3. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.0079 of 2023, under Section 306 IPC, Police Station Pipri, District Sonbhadra during pendency of the trial.

4. FIR of the present case was lodged against the applicant and others under Sections 302 IPC on 11.6.2023 through an application under Section 156(3) Cr.P.C. dated 30.1.2023 and according to FIR applicant and co-accused Kahkasa Parveen was having illicit relationship and deceased, i.e., husband of co-accused Kahkasa Parveen objected and only due to this reason on 13/14.8.2023 applicant along with co-accused Kahkasa Parveen and others committed his murder.

5. Learned counsel for the applicant submits that entire allegation

made against the applicant is totally false and baseless and FIR of the present case was lodged after several months through an application under Section 156(3) Cr.P.C. and even application under Section 156(3) Cr.P.C. was moved after five months.

6. He further submits that although in the FIR there was allegation of murder but during investigation the case was converted under Section 306 IPC as it was found that deceased committed suicide by hanging himself.

7. He further submits that actually applicant was not having any illicit relationship with the wife of deceased, i.e., co-accused Kahkasa Parveen and deceased committed suicide as he was having heavy loan and he was unable to repay the same.

8. He further submits that there is no evidence which can show that due to abatement of the applicant deceased committed suicide.

9. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 22.8.2023.

10. Per contra, learned AGA although opposed the prayer for bail but could not dispute the fact that the FIR of the present case was lodged through an application under Section 156(3) Cr.P.C. and even application under Section 156(3) Cr.P.C. was moved after about five months.

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

12. Considering the fact that FIR of the present case was lodged

after more than 10 months through an application under Section 156(3) Cr.P.C. and even application under Section 156(3) Cr.P.C. was moved after about five months, 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-**Nitish Pathak** 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 :- 16.10.2023**  
**SKM**