

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51704 of 2022

Applicant :- Mahesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Virendra Pratap Pal, Saroj Kumar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Saroj Kumar Dubey, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 462 of 2018, under Sections 302, 201 IPC, Police Station- Rura, District- Kanpur Dehat, during pendency of the trial in the court below.
3. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 19.11.2020 and he is pressing the instant second bail application on the ground that it is a case of circumstantial evidence and applicant is in jail since 12.12.2018 i.e. for last almost five years and till date, trial of the case could not be concluded.
4. He further submitted that except the recovery of Aadhar Card and Driving License of the deceased from the possession of the applicant, there is no other cogent evidence against the applicant. He further submitted that as applicant was brother-in-law(jija) of the deceased, therefore, it is not proper to presume, at this stage, merely on the basis of recovery of these two documents from the possession of the applicant that applicant committed his murder.
5. He further submitted that applicant is not having any previous criminal history but after arrest in the present matter, he was made accused under the provision of Gangsters Act on the basis of present case.
6. Per contra, learned AGA opposed the prayer for bail and submitted that this is the second bail application filed on behalf of

the applicant but could not dispute the fact that it is a case of circumstantial evidence and applicant is in jail in the present matter for last almost five years.

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

8. However, this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 19.11.2020 but it appears that it is a case of circumstantial evidence and applicant is in jail in the present matter since 12.12.2018 i.e. for last almost five years.

9. Further, even from the record, it reflects that except the recovery of Aadhar Card and Driving License of the deceased from the possession of the applicant, there is no other cogent evidence against the applicant on record. I find force in the argument advanced by learned counsel for the applicant that as applicant is brother-in-law(jija) of the deceased, therefore, merely on the basis of recovery of these two documents from the possession of the applicant, at this stage, it cannot be said that applicant committed his murder.

10. Further, however, apart from the present case, applicant is also having criminal history of one case of Gangsters Act but it appears that on the basis of present matter, subsequently applicant was made accused under the provision of Gangsters Act.

11. Therefore, considering the facts and circumstances of the case discussed above, particularly, the long incarceration of the applicant of five years, in my view, applicant is entitled to be released on bail.

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

13. Let the applicant- **Mahesh** 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.

14. 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.

15. 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 :- 11.12.2023

KK Patel