

Neutral Citation No. - 2023:AHC:215806

Resevered on 31.10.2023

Delivered on 07.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43385 of 2023

Applicant :- Lavkush Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Virendra Kumar Kori,Balram Pratap

Counsel for Opposite Party :- G.A.,Anand Kumar Pandey,Kamlesh
Kumar Bharti

Hon'ble Siddharth,J.

Heard Shri Virendra Kumar Kori, learned counsel for the applicant; Shri Anand Kumar Pandey and Shri Kamlesh Kumar Bharti, learned counsel for the informant and Shri C.L. Singh, learned A.G.A-1 for the State.

There is allegation in the first information that today i.e. 05.03.2023 at 4.00 p.m., son of the informant, Anurag Pal, aged about 9 years had gone on by-cycle. He was abducted by co-accused namely, Indrajeet Yadav, Amarjeet Yadav and Rajesh Yadav who belong to the same village. Son the informant did not raised any alarm. The son of the neighbour, Kishan Pal, aged about 10 years, had seen the abducted son of the applicant in a car. Co-accused, Rajesh Yadav, had earlier also quarrelled with him and had threatened that he will kidnap his son and informant had also given complaint in this regard to the police earlier. Subsequently dead body of son of the informant was recovered from a pond in adjoining of District- Sonebhadra in District Mirzapur.

Learned counsel for the applicant submits that he was not named in the first information report. His name has surfaced for the first time in the confessional statement of co-accused, Amarjeet

Yadav. He also confessed to involvement of Shiv Kumar Dubey, Om Prakash Yadav, Pras Nath, Karan alias Golu, Ganesh Pratap Singh. In the incident they all were assigned the role of tying the body of the deceased from a stone and submersing it in a pond.

Learned counsel for the applicant further submits that co-accused, Om Prakash Yadav, Pras Nath and Rajesh Kumar Yadav have been granted bail by this court and their bail orders are already on record collecting as Annexure no.6 to the affidavit. He has been implicated only because of being friend of co-accused, Karan @ Golu Yadav. There is no independent witness of the incident. There is allegation that deceased was strangled to death but no sign of strangulation was found on the person of deceased. The applicant had no enmity with the informant. The named co-accused and the alleged kidnapper, Karan @ Golu Yadav, were related to the informant. The applicant has no criminal history to his credit and he is in jail since 10.03.2023.

Learned counsel for the informant has vehemently opposed the bail application. He has submitted that there is dispute between the parties regarding a land of Gram Sabha, which was illegally encroached by the co-accused persons and informant had filed a compliant against them. He has not replied specifically to any of the arguments made on behalf of the applicant but has submitted that applicant does not deserves to be enlarged on bail. He has been rightly implicated in this case.

After hearing rival contention of the parties, this court finds that there is no credible evidence against applicant, except confessional statement of co-accused, Amarjeet Yadav. One of the named accused, Rajesh Kumar Yadav, has already been enlarged on bail in Crl. Misc. Bail Application No.37954 of 2023. There is no eye witness account against the applicant.

Learned AGA has opposed the prayer for bail but could not dispute the above submissions.

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping 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 and recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021 and considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant, Lavkush Yadav, involved in Case Crime No.42 of 2023, under Sections 302, 201, 364, 120B, 34 I.P.C, Police Station Ghorawal, District- Sonbhadra 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

- (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, the complainant is free to move an application for cancellation of bail before this court.

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

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

Registrar (compliance) is directed to communicate this order to the trial court concerned within ten days.

Order Date :- 07.11.2023

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