

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43800 of 2023

Applicant :- Mukesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Zafar Abbas, Sarve Nazir

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Zafar Abbas, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, for the State.

2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.137 of 2022, under Section 302 IPC, Police Station Bhagatpur, District Moradabad during pendency of the trial.

3. FIR of the present case was lodged against the applicant by his mother and according to the FIR, elder son of the informant was used to consume liquor and on 11.6.2022 at about 12.00 PM in the noon he came under intoxication and thereafter some dispute arose between both the brothers, i.e., applicant and his elder brother and thereafter informant had gone to forest and when she was returning to home then found that home was locked and applicant was standing on the way and he handed over the key of the house to her and when she arrived at home then found that dead body of her elder son was lying. It is further mentioned in the FIR that informant was having doubt that applicant strangled his brother.

4. Learned counsel for the applicant submits that except suspicion there is no evidence against the applicant and as applicant used to object his brother, i.e., deceased as he consumed liquor and

sometimes dispute arose between both the brothers, therefore, mother of applicant lodged FIR against him.

5. He further submits that during trial informant, i.e., mother of applicant and all other witnesses who were although not the eye witnesses when appeared before the trial court then they have been declared hostile.

6. He further submits that as per prosecution on the pointing out of applicant a scarf (Dupatta) was recovered from the house but merely on the basis of such recovery at this stage it cannot be said that applicant is the person who committed the murder of his brother.

7. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 12.6.2022.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by the learned counsel for the applicant.

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

10. From the record it appears that on the basis of suspicion FIR of the present case was lodged and there is no eye witness account and during trial, informant i.e., mother of the deceased and other witnesses have declared hostile.

11. However, according to the prosecution case on the pointing out of applicant one scarf was recovered which was alleged to have been used in the instant crime but I find force in the argument

advanced by the learned counsel for the applicant that merely on the basis of recovery of scarf (dupatta) at this stage it cannot be said that applicant committed murder of the deceased, i.e., his brother.

12. Further, applicant is not having any previous criminal history and in the present matter he is in jail since June, 2022, i.e., for more than a year.

13. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

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

15. Let the applicant-**Mukesh** 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.

16. 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.

17. 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 :- 28.10.2023

SKM