

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44302 of 2023

Applicant :- Chhotu @ Chhotaiya

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Ajay Kumar, learned counsel for the applicant, Sri Bade Lal Bind, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Chhotu @ Chhotaiya, seeking enlargement on bail during trial in connection with Case Crime No. 353 of 2023, under Sections 302, 201 IPC, Police Station Tundla, District- Firozabad.
4. The FIR was lodged by a stranger before Police Station- Tundla, District- Firozabad, regarding discovery of a dead body tied with a pumpset against unknown person. There was also injury found on the face of the dead body. During post mortem seven injuries were found on the dead body of the deceased and cause of his death was found to be asphyxia as a result of strangulation. In the statement of the brother Pramod of the deceased recorded on 10.05.2023 in which he stated that his deceased brother had gone on motorcycle on 08.05.2023 to have hair cut and thereafter his dead body was recovered. In his second statement, Pramod Kumar stated that his brother, Shyam Singh and Guddu the informant informed that Sonu, Jitendra @ J.K. of his village and the applicant resident of village Dhurra, have committed the murder of his brother. During search of his brother, he saw these persons about ½ km near his village but did not doubt them. After five days of the incident, statement of another brother of the deceased, Guddu, was recorded by the Investigating Officer on 13.05.2023 wherein he stated that there was dispute regarding chakroad between the deceased and Sonu and his brother-in-law, due to the present incident, dispute had taken place between them. After six days of the alleged

incident, statement of another brother of the deceased, Shyam Singh, was also recorded who claimed himself to be eye witness of the incident and implicated the applicant and the other co-accused. Thereafter, the applicant and another co-accused were arrested on 15.05.2023 and a button of the deceased and pieces of bricks were recovered on their pointing out.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the incident took place on 08.05.2023. It is argued that the witnesses, Guddu, Shaym Singh and Pramod Kumar never lodged any missing report of FIR before the police. It is further argued that except confessional statement of the co-accused Shaym Singh, joint recovery of pieces of bricks from joint possession of the accused persons, there is nothing incriminating recovered by the applicant. It is argued that the alleged joint recovery is barred by Section 27 of the Evidence Act. It is further argued that co-accused Sonu has been granted bail by a co-ordinate Bench of this Court vide order dated 05.10.2023 passed in Crl. Misc. Bail Application No. 40108 of 2023 (Sonu Vs. State of U.P.), copy of the order has been produced before the Court which is taken on record. It is further argued that the applicant has no criminal history as stated in para 29 of the affidavit and is in jail since 15.05.2023.

6. Learned counsel for the State vehemently opposed the prayer for bail and argued that there are seven injuries were found on the person of the deceased. The accused has admitted taking the deceased with them for consuming liquor and, thereafter, strangulating him to death by gamcha. It is further submitted that there is also an eye witness account of the incident of Shayam Singh, brother of the deceased against the applicant. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

7. After having heard learned counsel for the parties and perusing the records, it is evident that Shaym Singh claims to have seen the incident but there is no explanation why he did not report the matter to the police. Guddu and Pramod who are also brothers of the deceased made no efforts to search the deceased, who went missing since 08.05.2023. The confessional statements of the accused persons are only evidence against them at this stage which are not relevant in view of Section 25 of the Evidence Act. The recovery of pieces of bricks/stones from open place has only been made. Co-accused Sonu has been granted bail.

8. Looking to the facts and circumstances of this case, the nature

of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant **Chhotu @ Chhotaiya**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails 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 I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the

conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is ***allowed***.

Order Date :- 18.10.2023

M. ARIF

(Samit Gopal, J.)