

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44707 of 2023

Applicant :- Yadram

Opposite Party :- State of U.P.

Counsel for Applicant :- R.K Singh Gaharwar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri R.K. Singh Gaharwar, learned counsel for the applicant and Sri Ajeet Kumar Madhesiya, learned brief holder for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 259 of 2022, under Section 302 IPC, Police Station- Arniya, District- Bulandshahar, during pendency of the trial in the court below.

3. FIR of the present case was lodged against co-accused Gaurav Sharma and Yadram and according to the FIR, Gaurav Sharma is the nephew of the informant and he along with his friend i.e. applicant committed the murder of his father.

4. Learned counsel for the applicant submitted that totally on the basis of false allegation, applicant has been made accused in the present matter only due to reason that he is the friend of the son of the deceased. He further submitted that there is no evidence on record, which can show that applicant alongwith co-accused Gaurav Sharma, committed the murder of the deceased and after three weeks an evidence has been collected the by Investigating Officer to the effect that applicant and deceased were last seen alongwith co-accused Gaurav and merely on the basis of such evidence, at this stage it cannot be said that applicnat committed the murder of the deceased alongwith co-accused Gaurav Sharma.

5. He further submitted that bail application of co-accused Gaurav Sharma has been allowed by co-ordinate Bench of this Court vide order dated 10.10.2023 passed in Criminal Misc. Bail Application No. 38980 of 2023 and case of applicant is even at better footing than co-accused Gaurav as admittedly there is no motive of the applicant to commit the murder of the father of co-accused Gaurav.

6. He further submitted that although, applicant is having criminal history of one case of theft but his criminal criminal history has

been explained in the instant bail application and he is in jail since 10.11.2022 i.e. for almost a year.

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

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

9. Considering the fact that it is a case of circumstantial evidence and only evidence against the applicant is of last seen and even last seen evidence was given by the witnesses after three weeks and applicant is in jail for almost a year and co-accused Gaurav has been released on bail, in my view, applicant is also entitled to be released on bail.

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

11. Let the applicant- **Yadram** 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.

12. 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.

13. 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 :- 19.10.2023

KK Patel