

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43877 of 2023

Applicant :- Javed

Opposite Party :- State of U.P.

Counsel for Applicant :- Ranjan Dhvaj Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Ranjan Dhvaj Tiwari, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 368 of 2023, under Section 302 IPC, Police Station- Nichlaul, District- Maharajganj, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant and two others and according to the FIR, on 29.07.2023 deceased had gone along with applicant and his two other friends to see the fair but did not return and on 30.07.2023, a missing report was lodged by the informant. It is further mentioned in the FIR that applicant along with his two associates committed the murder of the deceased.
4. Learned counsel for the applicant submitted that on the basis of evidence of last seen, applicant along with two others has been made accused in the present matter. He further submitted that from the perusal of the post-mortem report of the deceased, it reflects that he died due to drowning and his post-mortem was conducted on 31.07.2023 at about 2:35 p.m. in the afternoon and according to the post-mortem report, deceased might have died about one day before and, therefore, it appears that deceased died in the afternoon of 30.07.2023.
5. He further submitted that as per the prosecution, applicant and other accused persons had gone along with the deceased to see fair on 29.07.2023, therefore, there is no proximity of time between the alleged last seen evidence and time of death of the deceased.

6. He further submitted that however, as per the allegation, when applicant was arrested then he confessed his guilt and from his possession one mobile phone of the deceased was recovered and from the joint pointing out of the applicant and other accused persons, *gamacha* and *danda* were recovered, which was alleged to have been used in the instant crime. He further submitted that merely on the basis of such recoveries, at this stage it cannot be said that applicant involved in the murder of the deceased.

7. He further submitted that bail application of co-accused Dilshad, who was also named in the FIR along with the applicant, has been allowed by co-ordinate Bench of this Court on 13.10.2023 vide Criminal Misc. Bail Application No. 43789 of 2023 and case of applicant is at par with him. He placed the bail order of co-accused Dilshad during the course of argument, which is taken on record and marked as 'A'.

8. He further submitted that applicant is not having any criminal history and he is in jail since 03.08.2023.

9. 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.

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

11. It is a case of circumstantial evidence and apart from the last seen evidence, there is also evidence against the applicant that from his possession one mobile phone of the deceased was recovered but from the post-mortem report of the deceased, it appears that there is no proximity of time between death of the deceased and last seen evidence given by the prosecution. I find force in the argument advanced by learned counsel for the applicant that merely on the basis of recovery of mobile phone of the deceased from the possession of the applicant, at this stage it cannot be said that applicant involved in commission of the instant crime.

12. Further, although, as per the prosecution, from the joint pointing out of the applicant and co-accused Dilshad and Jiyaal, *danda* and *gamacha* have been recovered but co-accused Dilshad has been released on bail by co-ordinate Bench of this Court and even at this stage, merely on the basis of this recovery it cannot be said that applicant committed the murder of the deceased.

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- **Javed** 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 :- 16.10.2023

KK Patel