

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44649 of 2023

Applicant :- Kapil

Opposite Party :- State of U.P.

Counsel for Applicant :- Mayank Yadav, Vivek Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Sandeep Tripathi, Advocate, filed his power today on behalf of the informant, which is taken on record.

2. Heard Sri Vivek Kumar Singh, learned counsel for the applicant, Sri Sandeep Tripathi, learned counsel for the informant and Sri R.N. Srivastava, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 80 of 2023, under Sections 302, 120-B IPC, Police Station- Bhaura Kalan, District- Muzaffarnagar, during pendency of the trial in the court below.

4. FIR of the present case was lodged against unknown persons and according to the FIR, dead body of the uncle of the informant was found in the field and it appears that some unknown person has committed his murder.

5. Learned counsel for the applicant submitted that it is a case of circumstantial evidence and complicity of the applicant was revealed during investigation through the statement of co-accused Prashant.

6. He further submitted that apart from the statement of co-caused Prashant, IO collected the call details of applicant and other accused persons and from the call details of accused persons including applicant, it appears that on the date of incident, several times they used to talk with each other. He further submitted that merely on the basis of call details at this stage it cannot be said that applicant participated in the incident.

7. He further submitted that there is no cogent evident available against the applicant on record and merely on the basis of these

evidences, charge-sheet has been filed against the applicant.

8. He further submitted that applicant is not having any criminal history and he is in jail since 27.07.2023.

9. Per contra, learned AGA as well as learned counsel for the informant although, opposed the prayer for bail but could not dispute the fact that except statement of co-accused and confessional statement of the applicant and call details of the applicant and other accused persons to show that they made conversation with each other, there is no other evidence against the applicant on record.

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 it appears that name of the applicant was disclosed through the statement of co-accused Prashant and thereafter it is alleged that when applicant was arrested then he confessed his guilt.

12. However, as per the prosecution, during investigation, Investigating Officer also procured call details of the applicant and other accused persons and from the call details, it appears that applicant has made conversation with other accused persons on the date of incident but I find force in the argument advanced by learned counsel for the applicant that merely on the basis of conversation made by the applicant with other accused persons, it cannot be said at this stage that applicant participated in the instant crime.

13. Further, applicant is not having any criminal history and he is in jail since July, 2023.

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

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

16. Let the applicant- **Kapil** 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.

17. 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.

18. 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