

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44425 of 2023

Applicant :- Durga @ Yuvraj

Opposite Party :- State of U.P.

Counsel for Applicant :- Shad Khan, Ajay Chandragupta

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Shad Khan, learned counsel for the applicant and Sri Manoj Kumar Singh, learned Brief Holder for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 27 of 2023, under Sections 147, 302, 34 IPC, Police Station Colonelganj, District Kanpur Nagar during pendency of the trial.

3. FIR of the present case was lodged against applicant and eight others and according to the FIR applicant and other accused persons made assault upon the uncle of the informant through rod and due to the assault made by them, he sustained injuries.

4. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Sections 147, 307, 34 IPC but after the death of the injured, case was converted under Section 302 IPC. He further submits that on the basis of general allegation, applicant has been made accused along with eight others and actually he did not participate in the incident and due to the previous enmity, which has been admitted by the witnesses in their statements during investigation, he has been made accused in the present matter along with other accused persons.

5. He further submits that although from the post mortem of the deceased, it appears that he sustained as many as 13 injuries but according to the doctor he died due to strangulation, therefore, due to the ante mortem injuries sustained by him, he did not die and only due to strangulation he lost his life and there is no evidence on record, which can show that applicant strangled him.

6. He further submits that bail application of co-accused Soni @ Sunita has already been allowed by the co-ordinate Bench of this

Court vide order dated 11.08.2023 passed in Criminal Misc. Bail Application No. 33120 of 2023. He further submits that while granting bail to her, this Court although considered the fact that she was lady but while granting bail to her, the co-ordinate Bench of this Court also touched the merit of the case and as far as merit of the case is concerned, the case of applicant is at par with Soni @ Sunita. He placed the bail order of co-accused Soni @ Sunita during the course of argument, which is taken on record and marked as 'A'.

7. He further submits that although applicant is having criminal history of one case but his criminal history has been explained in the instant bail application and in the present matter he is in jail since 26.02.2023 i.e. for more than six months.

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

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

10. From the perusal of record, it appears that on the basis of general allegation applicant has been made accused in the present matter along with eight others and although deceased sustained as many as 13 injuries but according to the autopsy surgeon he died due to strangulation and there is no evidence on record that applicant is the person who strangled the deceased.

11. Further, bail application of co-accused Soni @ Sunita has already been allowed by the co-ordinate Bench of this Court vide order dated 11.08.2023 passed in Criminal Misc. Bail Application No. 33120 of 2023 and while granting bail to her, the co-ordinate Bench of this Court also touched the merit of the case and on merit case of applicant is at par with Soni @ Sunita.

12. Further, applicant is however having criminal history of one case but from perusal of the record, it appears that it is a case of minor offences relates to offence under Section 452, 323 IPC and criminal history of the applicant has been explained in the instant bail application.

13. Further, in the present matter he is in jail since 26.02.2023 i.e. for more than six months.

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 - **Durga @ Yuvraj** 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 :- 1.11.2023

AK Pandey