**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 44236 of 2023

**Applicant :-** Karan Alias Kalla
**Opposite Party :-** State of U.P.
**Counsel for Applicant :-** Tej Om Prakash Gupta
**Counsel for Opposite Party :-** G.A.,Mohd. Monis,Navneet Kumar

**Hon'ble Sameer Jain,J.**

1. Supplementary affidavit filed today on behalf of the applicant and short counter affidavit filed today on behalf of the informant are taken on record.

2. Heard Sri Tej Om Prakash Gupta, learned counsel for the applicant, Sri Mohd. Monis, learned counsel for the informant and Sri Ajeet Kumar Madhesiya, learned brief holder for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 115 of 2023, under Sections 302, 201 IPC, Police Station- Nasirpur, District- Firozabad, during pendency of the trial in the court below.

4. FIR of the present case was lodged against applicant and two others on 07.07.2023 and according to the FIR, applicant alongwith two other accused persons committed the murder of the brother of the informant in the intervening night of 04/05.07.2023 by strangulating him and thereafter they have thrown his dead body in the well. It is further mentioned in the FIR that co-accused Reena i.e. wife of the deceased was having illicit relationship with co-accused Suneel and applicant is the friend of co-accused Sunil.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and even from the record, it reflects that only being friend of co-accused Suneel, he has been made accused in the present matter. He further submitted that although, from the FIR, it reflects that it is a case of circumstantial evidence but during investigation after three days when statements of two eye-witnesses Amar Singh and Pappu were recorded then they stated that they witnessed the

applicant and two other accused persons while they were committing the murder of the deceased but their statements prima facie appears to be false and if in fact they would have witnessed the incident then they must would have disclosed this fact earlier either to the informant or to the police and there was no occasion for them to remain silent for a week.

6. He further submitted that during investigation, Investigating Officer also recorded the statements of two witnesses namely Sukhdev and Shriniwas and they gave evidence of last seen and witness Sukhdev further stated that applicant and other accused persons confessed their guilt before him but there statements also do not inspire any confidence.

7. He further submitted that except the above noted evidence, there is no other evidence against the applicant on record.

8. He further submitted that applicant is not having any criminal history and he is in jail since 09.07.2023.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that Amar Singh and Pappu were the eye-witnesses and at this stage, their statements should not be disbelieved. They further submitted that even witnesses Sukhdev and Shriniwas also gave evidence of last seen against the applicant and other accused persons, therefore, considering the facts and circumstances of the case, applicant should not be released on bail.

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

11. Applicant was named in the FIR alongwith his friend Suneel and wife of the deceased, Reena and as per allegation, as wife of the deceased, Reena was having illicit relationship with co-accused Suneel and, therefore, they alongwith applicant committed the murder of the deceased and from the perusal of the FIR, it appears that on the basis of suspicion, FIR of the present case was lodged.

12. However, during investigation, Investigating Officer recorded the statement of two alleged eye-witnesses Amar Singh and Pappu and they stated that on 04.07.2023 they witnessed that applicant and two other accused persons committed the murder of the deceased but their statements recorded on 10.07.2023 i.e. after six days from the incident and after three days from the date of lodgement of the FIR and I find force in the argument advanced by

learned counsel for the applicant that if they would have witnessed the incident then they definitely would have either tried to save the life of the deceased or immediately informed this fact either to the informant or to the police.

13. Further, apart from the statements of above two nominated eye-witnesses, there are also statements of two other witnesses, Sukhdev and Shriniwas and they gave the evidence of last seen against the applicant and witness Sukhdev also stated that applicant and other accused persons confessed their guilt before him but their statements do not inspire any confidence and they also earlier did not disclose this fact either to the police or to the informant and, therefore, possibility cannot be ruled out at this stage that as applicant was already named in the FIR and he was the friend of co-accused Suneel and dispute with regard to relationship of the wife of the deceased and co-accused Suneel was going on, therefore, subsequently all these witnesses started giving statements against the applicant.

14. Further, applicant is not having any criminal history and he is in jail since 09.07.2023.

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

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

17. Let the applicant- **Karan Alias Kalla** 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.

18. 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.

19. 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 :-** 31.10.2023
KK Patel

Digitally signed by :-
KRISHN KANT PATEL
High Court of Judicature at Allahabad