

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44521 of 2023

Applicant :- Tara Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Kumar Singh, Ali Hasan, Rupesh Singh Parihar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Ishtiaq Ahmad Siddiqui Advocate holding brief of Sri Manish Kumar Singh and Sri Shatrughan Yadav, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 24 of 2023, under Sections 34, 363, 364, 302, 342, 201 IPC, Police Station Sarai Inayat, District Prayagraj, during pendency of the trial in the court below.
3. FIR of the present case was lodged against unknown person and according to the FIR on 1.2.2023 at about 3:00 pm the son of the informant aged about 5 years had gone to play with other boys but did not return.
4. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under section 363 IPC against unknown person but after recovery of the dead body of the son of the informant, case was converted under section 302 IPC.
5. He further submitted that nobody was named in the FIR including applicant and when the statement of the informant was recorded under section 161 Cr.P.C. then also he did not disclose the name of anyone but on 5.2.2023 he moved an application to the police by stating that applicant alongwith other co-accused persons had taken the deceased and thereafter when his second statement under section 161 Cr.P.C. was recorded on 5.2.2023 then he repeated the version of his application.
6. He further submitted that from the second statement of the informant recorded during investigation, it reflects that on the basis of information furnished by his wife, informant stated that applicant and three other accused persons had taken the deceased

and if it was the true fact then it must would have been taken place in the FIR and this fact clearly suggests that subsequently after three days a false story has been cooked up by the informant and applicant has been implicated in the present matter.

7. He further submitted that even except evidence of last seen, there is no other evidence against the applicant on record.

8. He further submitted that applicant is having no criminal history and she is in jail in the present matter since 6.2.2023.

9. Per contra, learned AGA opposed the prayer for bail but could not dispute the arguments 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 applicant was not named in the FIR and informant did not even disclose his name in his first statement recorded under section 161 Cr.P.C. but thereafter he moved an application to police and stated that applicant and three others had taken the deceased and in his second statement, he also repeated the same version of application and his wife also stated to the police during investigation that applicant and three others had taken the deceased but I find force in the argument advanced by learned counsel for the applicant that the story narrated by the informant and his wife subsequently does not appear to be convincing as if applicant had taken the deceased alongwith others then why this fact did not take place in the FIR and in the first statement of the informant.

12. Further, apart from the evidence of last seen, there is no other evidence against the applicant on record and applicant is having no criminal history and she is in jail in the present matter since 6.2.2023.

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-**Tara Devi**, 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 her 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 her 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 :- 19.10.2023

Ankita