

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44680 of 2023

Applicant :- Anil

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjeev Kumar Khare

Counsel for Opposite Party :- G.A., Satya Prakash Rathor

Hon'ble Sameer Jain, J.

1. Sri Sanjeev Kumar Khare, learned counsel for the applicant submits that due to mistake in the prayer clause case crime number and sections have been wrongly mentioned in the instant bail application, however, in the notice of learned AGA the correct prayer was mentioned and, therefore, he may be permitted to make necessary correction in the prayer clause of the instant bail application.

2. In view of the above, learned counsel for the applicant is permitted to make necessary correction in the prayer clause of the instant bail application.

3. Heard Sri Sanjeev Kumar Khare, learned counsel for the applicant, Srti Satya Prakash Rathor, learned counsel for the informant and Sri Amar Nath Vishwakarma, learned Brief Holder, for the State.

4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 225 of 2023, under Sections 302, 504, 506 IPC, Police Station Kotwali Nagar Mahoba, District Mahoba, during pendency of the trial in the court below.

5. FIR of the present case was lodged against the applicant and his wife and according to the FIR, on 31.5.2023 at about 8:00 p.m. in the night, applicant and his wife started abusing the deceased who

was elder brother of the applicant and when deceased objected then they strangulated him through rope.

6. It is further mentioned in the FIR that the daughter of the deceased was alongwith him at the time of incident and when she informed the informant then informant also arrived at spot alongwith other witnesses and also witnessed the applicant and his wife.

7. Learned counsel for the applicant submitted that applicant is the Devar of the informant and deceased was his brother and totally on the basis of false allegation, he has been made accused in the present matter alongwith his wife.

8. He further submitted that FIR of the present case was lodged after 18 hours and no plausible explanation has been given by the informant in this regard and this delay in lodging the FIR clearly suggests that subsequently a false story has been cooked up by the informant to implicate the applicant and his wife in the present matter.

9. He further submitted that the daughter of the informant is about 15-16 years old and she was alleged eye witness and if the applicant and his wife would have strangulated her father in her presence then she definitely would have intervened but in spite to save her father as per prosecution case she ran towards her house to inform her mother and this unnatural conduct of the sole alleged eye-witness i.e. daughter of the deceased clearly suggests that she was actually not an eye witness.

10. He further submitted that prosecution failed to come up with any specific motive and therefore, applicant may be enlarged on bail.

11. He further submits that bail application of Smt. Sughar Devi, the wife of applicant, has already been allowed by this Bench and on merit the case of applicant is at par with her.

12. Per contra, learned Brief Holder and learned counsel for the informant opposed the prayer for bail and submitted that daughter of the informant is the eye-witness but could not dispute the fact that FIR of the present case was lodged after 18 hours and applicant and his wife are the close relatives of the deceased and they were not having any weapon in their hands but in spite of that, daughter of the deceased did not try to save the life of her father.

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

14. Although, there is allegation that applicant and his wife strangled the deceased through rope and during investigation, rope was also recovered on the pointing out of the applicant but neither applicant nor his wife was having any weapon and the alleged witness i.e. daughter of the deceased was around 15 years old girl but she did not even try to save the life of her father.

15. Further, FIR of the present case was lodged after 18 hours of the alleged incident and no explanation has been given in this regard by the prosecution.

16. Further prosecution has not come with any specific motive of the crime.

17. Further, bail application of co-accused Smt. Sughar Devi, the wife of applicant, has already been allowed by this Court and applicant is not having any previous criminal history and he is in jail since 3.6.2023, i.e., for more than six months.

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

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

20. Let the applicant-**Anil**, 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 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.

21. 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.

22. 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 :- 2.11.2023

SKM