

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45820 of 2023

Applicant :- Sanjay Rastogi @ Shanni Rastogi

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Saroj Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Saroj Kumar Yadav, learned counsel for the applicant and Sri Ajeet Kumar Madheshia, learned Brief Holder for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 168 of 2023, under Sections 302 IPC, Police Station Atrauliya, District Azamgarh, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 17.6.2023 against the applicant by his wife and according to the FIR on 16.6.2023 at about 8 am in the morning applicant has taken the informant and her son for the purpose to take bath in the pond and when he demanded money from the informant and informant refused to accept his demand then he committed the murder of his son aged about 6 years by drowning him in the pond.

4. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and FIR of the present case was lodged on 17.6.2023 i.e. after more than 30 hours.

5. He further submitted that although as per the allegation incident of drowning occurred on 16.6.203 at about 8 am and on the same day on 16.6.2023 informant moved an application to the police at 2:24 p.m. in the afternoon and according to the application which has been annexed as annexure-7 to the affidavit it reflects that on 16.6.2023 at about 8 am applicant has taken his son for bath in the pond and when he returned back alongwith his son then suddenly his son became serious and when he was taken to the doctor then doctor declared him dead.

6. He further submitted that in the application dated 16.6.2023 there was no allegation against the applicant and it appears that at the time of taking bath accidentally some dirty water has

been consumed by the deceased and thereafter he died.

7. He further submitted that even as per post mortem report of the deceased, he died due to asphyxia as a result of drowning.

8. He further submitted that although number of eye witnesses stated that applicant was forcibly pushed the deceased i.e. his son in the pond but from their statements also it could not be reflected that applicant was trying to commit the murder of his son and even from their statements it appears that he was only trying to give bath to him and their statements and application dated 16.6.2023 moved by the informant completely belies the story narrated by the informant in the FIR.

9. He further submitted that actually relationship of the applicant with his wife was not cordial and when last year she was residing in her paternal home then on 1st of January, 2023 she lodged an FIR against the applicant under sections 323, 325, 504 and 506 IPC, P.S. Atrauli, District Azamgarh.

10. He further submitted that copy of the FIR could not be available earlier to the applicant but now certified copy of the same is available to him. He placed the certified copy of the FIR dated 1.1.2023 during the course of argument which is taken on record and marked as 'A'.

11. He further submitted that only due to the poor relationship between husband and wife when accidentally, son of the deceased and applicant died due to drowning then subsequently on the next day, applicant has been made accused in the present matter.

12. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 19.6.2023.

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

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

15. From the perusal of the record, it reflects that FIR of the present case was lodged on 17.6.2023 at 13:12 hours, although incident of drowning is said to have been occurred on 16.6.2023 at 8 am therefore, FIR was lodged after more than 30 hours.

16. Further, before lodging the FIR, on the date of incident i.e. 16.6.2023 at about 2:24 p.m. in the afternoon, the informant i.e.

wife of the applicant herself moved an application before the police which was been annexed as annexure-7 to the affidavit and in the application, she narrated a different story and stated that applicant had taken his son for bath and when he returned alongwith his son then suddenly his son became serious and thereafter when he was taken to the doctor then doctor declared him dead.

17. Further although during investigation, Investigating Officer recorded the statements of certain witnesses who claimed themselves to be eye witnesses and stated that they witnessed the applicant when he was trying to forcibly put his son in the water of the pond but even from their statements it reflect that applicant was giving bath to his son and merely on the basis of their statements, it is not reflected that applicant was trying to commit the murder of his son by drowning.

18. Further, as his son after bath returned to home and thereafter he died, therefore, possibility can not be ruled out that while taken bath the deceased who was the minor son of the applicant aged about 6 years consumed some dirty water and some other injurious substance including mud etc. and died subsequently.

19. Further, the post mortem of the deceased also suggests that deceased died due to asphyxia as a result of drowning. It also appears, relationship of the applicant with his wife, i.e. mother of the deceased was not cordial and earlier also on 1.1.2023 wife of the applicant had lodged a FIR against the applicant under sections 323, 325, 504 and 506 IPC.

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

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

22. Let the applicant-**Sanjay Rastogi @ Shanni Rastogi**, 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.

23. 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.

24. 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

Ankita