

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45547 of 2023

Applicant :- Satendra Alias Munna Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Radhey Shyam Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Radhey Shyam Yadav, learned counsel for the applicant and Sri Imran Khan, learned AGA, for the State.
2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Sessions Trial No. 120 of 2021 arising out of Case Crime No.920 of 2020, under Sections 302 and 201 IPC, Police Station Kotwali Farrukhabad, District Farrukhabad during pendency of the trial.
3. FIR of the present case was lodged against four persons (non applicant) and according to the FIR, due to previous enmity it appears that nominated accused persons committed the murder of the "Tau" of the informant.
4. Learned counsel for the applicant submits that applicant was not named in the FIR and during investigation when the statement of one eye witness Nand Kishore was recorded by Investigating Officer then he claimed that he witnessed the applicant while he was dragging the deceased from the house and left the dead body on the road and thereafter applicant was made accused and after investigation charge sheet was filed only against the applicant.
5. He further submits that when Nand Kishore was examined by the trial court as PW-2 then he did not support his earlier version and has been declared hostile. He next submits that his testimony

recorded by the trial court has been annexed along with the instant bail application.

6. He further submits that although applicant is having previous criminal history of two cases but both the cases were of Section 323 IPC and, therefore, on the basis of these two criminal history it cannot be said that due to threat of applicant the alleged eye witness Nand Koshore has turned hostile.

7. He further submits that applicant is in jail in the present matter since 3.10.2020, i.e., for more than three years.

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

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

10. From the record it reflects that applicant was not named in the FIR and his complicity was revealed during investigation when the statement of Nand Kishore was recorded by Investigating Officer and he although stated that he witnessed the applicant while he was dragging the dead body of the deceased from his house and left the same on the road but during trial when alleged eye witness Nand Kishore appeared before the trial court as PW-2 then he did not support the prosecution case and has been declared hostile.

11. However, applicant is having criminal history of two cases but it appears that both the cases were of Section 323 IPC and, therefore, I find force in the argument advanced by the learned counsel for the applicant that on the basis of criminal history for offence under Section 323 IPC it cannot be said that due to terror of applicant, witness Nand Kishore has been declared hostile.

12. Further, there is no such evidence on record which can show that applicant ever tried to threaten the witness Nand Kishore.

13. Further, applicant is in jail since 3.10.2020, i.e., for more than three years.

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-**Satendra alias Munna Gupta** 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 :- 30.10.2023
SKM