

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45437 of 2023

Applicant :- Naubhar

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinod Kumar Tirpathi, Manoj Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Today power has been filed by Sri Akhilesh Kumar Mishra and Sri Pankaj Kumar, learned Advocates on behalf of the informant, which is taken on record.
3. Heard Sri Vinod Kumar Tripathi, learned counsel for the applicant, Sri Akhilesh Kumar Mishra and Sri Pankaj Kumar, learned counsels for the informant and Sri Amar Nath Vishwakarma, learned Brief Holder, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.277 of 2023, under Sections 302, 201 and 34 IPC, Police Station Nagina, District Bijnor during pendency of the trial.
5. FIR of the present case was lodged against the applicant and three others and according to the FIR, on 8.8.2023 son of the informant was missing somewhere and in this regard on 10.8.2023 he lodged a missing report and on 15.8.2023 informant came to know that applicant along with other accused persons have committed the murder of his son.
6. Learned counsel for the applicant submits that applicant was

although named in the FIR but it appears that merely on the basis of suspicion he has been made accused in the present matter.

7. He further submits that during investigation as per allegation dead body of the deceased was recovered on the pointing out of co-accused Shekhar, Arvind and Brijesh and it is alleged that they confessed their guilt and they also disclosed the name of applicant.

8. He further submits that as per prosecution, when applicant was arrested then he also confessed his guilt.

9. He further submits that except the statement of co-accused persons and confessional statement of applicant there is no other evidence against the applicant on record.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 16.8.2023.

11. Per contra, learned AGA as well as learned counsel for the informant although opposed the prayer for bail but he could not dispute the fact that except the statements of co-accused persons and confessional statement of applicant before the Police, there is no other evidence against the applicant on record.

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

13. It is a case of circumstantial evidence and although applicant was named in the FIR but appears that he was named on the basis of suspicion and although after investigation charge sheet has also been filed against the applicant and others but it appears that

except the statements of co-accused persons and confessional statement of applicant, there is no other evidence against the applicant on record.

14. Further, undisputably the dead body was not recovered on the pointing out of applicant and it was recovered on the pointing out of rest of the accused persons.

15. Further, applicant is not having any previous criminal history and in the present matter he is in jail since August, 2023.

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

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

18. Let the applicant-**Naubhar** 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.

19. 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.

20. 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 :- 28.10.2023
SKM