

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47712 of 2023

Applicant :- Shivam @ Shubham Sirohi

Opposite Party :- State of U.P.

Counsel for Applicant :- Ardhendu Shekhar Sharma, Ram Babu Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Ram Babu Sharma, learned counsel for the applicant and Sri Amar Nath Vishwakarma, learned Brief Holder for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 10 of 2023, under Sections 302, 201 IPC, Police Station B.B. Nagar, District Bulandshahar during pendency of the trial.
3. FIR of the present case was lodged against the applicant and according to the FIR the son of the informant stayed in the house of the applicant and in the morning on 14.01.2023 his dead body was found near the house of the applicant on the road.
4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and applicant and deceased were very good friends and there was absolutely no occasion for the applicant to commit the murder of the deceased. He further submits that however, according to the prosecution, deceased stayed in the house of the applicant in the night and one witness Karan also gave the evidence of last seen of the night of 13.01.2023 but even if on the next day, the dead body of the deceased was found on the road then applicant cannot be held liable for his murder.
5. He further submits that as per prosecution deceased for last some days stayed in the house of the applicant and both shared the single bed and deceased used to urinate on the bed and only due to this reason applicant committed the murder of the deceased and this motive appears to be highly improbable and on the basis of such weak motive, it cannot be said that applicant committed the

murder of the deceased.

6. He further submits that although witness Karan stated that in the night of 13.01.2023 both applicant and deceased simultaneously had gone from his house but there is no evidence that after departure deceased had gone to the house of the applicant and as deceased was resident of the same village where applicant resides, therefore, possibility cannot be ruled out that after departure from the house of Karan deceased might have left the company of the applicant, therefore, merely on the basis of such last seen evidence, it cannot be said that applicant committed the murder of the deceased. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 15.02.2023.

7. Per contra, learned AGA opposed the prayer for bail and submitted that from the perusal of the record of the case, it reflects that deceased stayed in the house of the applicant and both were also seen together last time and thereafter dead body of the deceased was found on the road near the house of the applicant, therefore, considering the facts and circumstances of the case, it cannot be said that there is no evidence against the applicant on record, therefore, applicant should not be released on bail.

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

9. It appears to be a case of circumstantial evidence and as per prosecution deceased, who was although resident of same village, stayed in the house of the applicant for last few days and in the night of 13.01.2023 one Karan also witnessed the applicant along with deceased and thereafter in the morning next day i.e. on 14.01.2023 dead body of the deceased was found on the road near the house of applicant. From perusal of the record, it appears to be a proximity between last seen evidence and death of the deceased as according to the doctor who conducted the post mortem of the deceased, deceased died around 10-12 PM in the night on 13.01.2023. However, motive of the case appears to be quite weak but this fact can only be considered by the trial court during trial.

10. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail.

11. Accordingly, the instant bail application is rejected.

12. 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 :- 8.11.2023

AK Pandey