

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47195 of 2023

Applicant :- Sachin Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Satyendra Narayan Singh, Satya Prakash Singh

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. It has been argued by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case. Learned counsel further submits that initially an F.I.R. dated 04.09.2019 was lodged by the Village Pradhan by submitting that on 03.09.2019 when local villagers reached at the river bank they say that a sack was lying near Narapar Shiv Mandir wherein a dead body was present and a leg came outside from the sack, which was being dragged by stray animals. After inquest proceedings, the postmortem of the dead body was conducted and cause of death was found to be asphyxia due to ante mortem throttling. Despite best efforts the police could not collect whereabouts of the dead body and submitted closure report on 31.01.2020. Learned counsel for the applicant further submits after four years of the said incident, on 23.07.2023 a F.I.R. was lodged by the complainant against applicant and one person namely Ashwani alleging therein that on 25.08.2019 his daughter aged about 28 years went outside the house by telling that he is going to get her enrollment in B.T.C. and MSc. course but did not return, then he submitted a missing report before the police, but he could not find her daughter till date, on being searched he got information that Ashwani (co-accused) and Sachin (applicant) were used to talk with her daughter and it appears that they enticed her daughter and kept her anywhere. Learned counsel for the applicant further submits that the Investigating Officer started the investigation and recorded statements of complainant and his wife, who repeated the same version of the F.I.R. The Investigating Officer also recorded statements of other witnesses who have not disclosed any name in their statements and some witnesses have

stated that from about four years they have not seen the daughter of the complainant. Learned counsel for the applicant further submits that since the aforesaid unknown dead body was not identified, therefore, it was sent for DNA test with Indrawati, who is mother of the deceased, and the same was tallied with the said unknown body. Learned counsel for the applicant further submits that relying upon the statements of complainant and his wife, wherein they have made suspicion upon Ashwani and the applicant, the police apprehended Ashwani and the applicant on 20.08.2023. Learned counsel for the applicant submits that Ashwani in his confessional statement has stated that he killed the deceased by strangulating her neck and father of Ashwani and co-accused Sachin helped him for throwing the dead body of the deceased by a vehicle. Learned counsel for the applicant further submits that there is no motive for the applicant to commit murder of the deceased, the deceased was in relation with Ashwani and nothing incriminating has been recovered from the possession or pointing out of the applicant. Learned counsel for the applicant further submits that except confessional statements of the applicant and co-accused, Ashwani, there is no evidence against the applicant, which statements are not admissible under the Evidence Act. Learned counsel for the applicant further submits that there is no evidence against the applicant for implicating him in the present case and the case of applicant is on different footing from the case of co-accused, Ashwani, who in his statement before the police has admitted that he killed the deceased by pressing her neck, thus, applicant has falsely been implicated in the present case. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 20.08.2023, having no criminal history.

3. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence.

4. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and

circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

5. Let applicant-**Sachin Kumar**, involved in Case Crime No. 308 of 2019, under Sections 302, 201, 366, 120-B I.P.C., Police Station Kotwali, District Azamgarh, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

6. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the

conditions mentioned above, court concerned will be at liberty to cancel the bail in accordance with law.

7. The bail application is **allowed**.

Order Date :- 6.11.2023

Mustaqeem.