

**Court No. - 68**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 47124 of 2023

**Applicant :-** Indrapal @ Mantri

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Nushra Siddiqui

**Counsel for Opposite Party :-** G.A.

**Hon'ble Dr. Gautam Chowdhary,J.**

1. Heard Ms. Nushra Siddiqui, the 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 F.I.R. dated 02.03.2023 was lodged by the complainant against Ramu Pandit and two unknown persons with the allegation that his elder brother namely Satish Chand (deceased) was working in a factory at Gajrauli, one Ramu Pandit, who is named in the F.I.R. has taken two lakh rupees from his elder brother and was not paying the said money despite repeated requests made by his elder brother, some days ago the complainant and his elder brother asked Ramu Pandit for returning his money and threatened them for dire consequences and today, i.e., 02.03.2023 at about 6:30 p.m. when his brother was standing near a shop the accused Ramu Pandit came there along with two other associates and Ramu Pandit murdered his elder brother by a firearm, thereafter, they fled away from the spot. Learned counsel for the applicant further submits that after inquest proceedings, postmortem of the deceased was conducted except one injury of showing bullet injury two other injuries of abrasion were found on the person of the deceased and cause of death was found to be shock and hemorrhage as a result of firearm injury. Learned counsel for the applicant further submits that eye witnesses, Santosh Kumar and Rishi Kumar in their statements had not named the applicant and stated that on the date of incident Ramu Pandit, Shivam and Aman came at the spot and Ramu Pandit made shot from his firearm. Learned counsel for the applicant submits that name of applicant came into light in the confessional statement of co-accused Aman wherein he has stated that when Ramu Pandit murdered the deceased the applicant was not present he was involved in the conspiracy of murder of the deceased.

Learned counsel for the applicant further submits that the complainant (P.W.1) in his statement recorded before the court below has stated that he has no knowledge that Ramu Pandit has borrowed the money from his brother, he was not present at the spot at the time of incident, he does not know two other persons who have been made accused by the police, thus, the complainant has been declared hostile. Learned counsel for the applicant further submits that similarly, P.W.3 who is mother of the deceased in her statement recorded before the court below has denied that she had seen the incident and she has been declared hostile. Learned counsel for the applicant further submits that one eye witness namely Rishi Kumar in his statement recorded before the court below has stated that he had not seen the incident, thus, he has also been declared hostile, thus, it has been submitted by the learned counsel for the applicant that there is bleak chance that prosecution may prove its case beyond reasonable doubt and the applicant may be convicted. 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 14.06.2023, 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, but he has not disputed that complainant and two other witnesses have been declared hostile before the court below.

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-**Indrapal @ Mantri**, involved in Case Crime No. 44 of 2023, under Sections 302, 120-B, 34 I.P.C., Police Station Hathras Junction, District Hathras, 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.