

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46255 of 2023

Applicant :- Sonu @ Mohammad Rafuat

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Singh, Preeti Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Ms. Preeti Dwivedi, learned counsel for the applicant and Sri R.N. Srivastava, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 229 of 2022, under Section 302 IPC, Police Station Jaitpura, District Varanasi during pendency of the trial.

3. FIR of the present case was lodged against unknown persons and according to the FIR the brother of the informant had gone for the purpose of his work on 19.11.2022 at about 8.00 AM in the morning but when he did not return up to 10.00 PM in the night then informant started searching him and on 21.11.2022 through paper he came to know that a dead body of an unknown person was found near the city station and when he arrived then found that the dead body was of his brother.

4. Learned counsel for the applicant submitted that applicant was not named in the FIR and during investigation when the statement of one Kallu Seth was recorded then he disclosed the name of applicant and others. She further submits that even from the statement of Kallu Seth, which is annexed as Annexure-3 to the affidavit, it reflects that principal accused was Mohd. Hamid and applicant and co-accused Riyaz and Faizu were standing there.

5. She further submits that co-accused Riyaz and Faizu have already been enlarged on bail by the co-ordinate Benches of this Court and their bail orders have been annexed along with instant bail application and on merit case of applicant is at par with them.

6. She further submits that however applicant is having criminal history of eight cases but his criminal history has been explained in

the supplementary affidavit filed today on behalf of the applicant in support of instant bail application.

7. She further submits that even co-accused Faizu was also having criminal history to his credit. She next submits that applicant in the present matter is in jail since 26.11.2022 i.e. for last more than a year.

8. Per contra, learned AGA however opposed the prayer for bail and submits that applicant is having criminal history of eight cases but could not dispute the fact that co-accused Faizu, who was also having criminal history, has already been enlarged on bail by the co-ordinate Bench of this Court and case of applicant is at par with him.

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

10. However, applicant is having criminal history of eight cases but his criminal history has been explained in the supplementary affidavit filed in support of instant bail application.

11. Further, it appears to be a case, in which, applicant was not named in the FIR but during investigation when the statement of one Kallu Seth was recorded then involvement of the applicant was revealed and from the statement of Kallu Seth it also reflects that he disclosed the name of four persons including applicant and from his statement it also reflects that principal accused was Mohd Hamid.

12. Further, as per statement of Kallu along with applicant co-accused Faizu and Riyaz were also standing along with principal accused Mohd. Hamid, therefore, from the record, it reflects that case of applicant is at par with co-accused Faizu and Riyaz and both have already been released on bail by the co-ordinate Benches of this Court.

13. Further, applicant in the present matter is in jail since 26.11.2022 i.e. for last more than a year.

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 - **Sonu @ Mohammad Rafuat** 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 :- 5.12.2023

AK Pandey