

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46279 of 2023

Applicant :- Rajendra Prasad Upadhyay

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajiv 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. Heard Sri Rajiv Kumar Tripathi, learned counsel for the applicant and Sri Ravi Kant Kushwaha, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 1022 of 2008 (Case No. 94 of 2009), under Sections 302, 201 IPC, Police Station Konch, District Jalau during pendency of the trial.

4. FIR of the present case was lodged against applicant on 16.12.2008 through an application moved under Section 156(3) Cr.P.C. dated 27.11.2008 and from perusal of the FIR, it appears that applicant was the relative of the deceased and with intention to grab his property, he committed his murder.

5. Learned counsel for the applicant submitted that although FIR of the present case was lodged in the year 2008 but after investigation the final report was submitted in favour of the applicant and against the final report informant filed protest petition and his protest petition was allowed in the year 2018 and applicant was summoned by the court concerned.

6. He further submits that although applicant was summoned by the court concerned in the year 2018 but as he could not receive any summoning order, therefore, he could not earlier appeared before the court concerned and when he came to know about the summoning order, then he challenged the proceedings pending against him before this Court vide Application U/S 482 Cr.P.C. No. 13800 of 2023 but on 13.07.2023 his application was dismissed

and thereafter on 18.08.2023 applicant surrendered before the court concerned.

7. He further submits that it is a case of circumstantial evidence and there is no evidence against the applicant on record except the verbal allegation and admittedly deceased died due to overdose of the medicine and there is no evidence on record, which can show that applicant has given the overdose to the deceased. He further submits that although applicant is having criminal history of two cases but criminal history of the applicant has been explained in the supplementary affidavit and in the present matter he is in jail since 18.08.2023.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

10. Considering the fact that it is a case of circumstantial evidence and initially final report was filed in favour of the applicant and applicant summoned on the basis of protest petition and except suspicion, there is no cogent evidence against the applicant on record, in my view, applicant is entitled to be released on bail.

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

12. Let the applicant - **Rajendra Prasad Upadhyay** 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.

13. 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.

14. 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 :- 2.11.2023

AK Pandey