

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46335 of 2023

Applicant :- Yogesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhilasha Singh, Ashutosh Yadav, Shyam Lal

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Power has been filed today by Sri V.C. Tiwari, Advocate on behalf of the informant which is taken on record.
2. Heard Sri Ashutosh Yadav, learned counsel for the applicant; Sri V.C. Tiwari,, learned counsel for the informant and Sri Shatrughan Yadav, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 156 of 2023, under Sections 452, 302, 120B, 34 IPC, Police Station Muradnagar, District Ghaziabad, during pendency of the trial in the court below.
4. FIR of the present case was lodged against four persons (non applicant) and one unknown lady and according to the FIR on 1.4.2023 at about 8:15 when informant and her husband were in their house then on the call bell when husband of the informant opened the door nominated accused persons committed his murder by opening fire.
5. It is further mentioned in the FIR that one unknown lady at the time of incident was doing reki.
6. Learned counsel for the applicant submitted that applicant was not named in the FIR and even when the first statement of the informant was recorded under section 161 Cr.P.C. then also she only repeated the version of the FIR and did not even disclose the name of the applicant but on 6.4.2023 i.e. after five days of the incident she moved an application and stated that applicant was also involved in the commission of murder of her husband and her father in law witnessed the applicant while he was going alongwith other accused persons.

7. He further submitted that when the statement of the father in law of the informant was recorded then he never stated that applicant on the date of incident by opening fire caused any injury to the deceased and he stated that three accused persons who committed the murder of the deceased stayed in the house of the applicant and therefore, from his statement it appears that applicant also conspired in the instant crime and with the aid of section 120B IPC applicant has been made accused in the present matter.

8. He further submitted that there is no cogent evidence against the applicant which can show that applicant conspired the present crime and he is having no criminal history to his credit and he is in jail in the present matter since 20.5.2023.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail but could not dispute the arguments on facts advanced by learned counsel for the applicant.

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

11. Considering the fact that informant of the case herself was an eye witness and she did not even disclose the name of the applicant either in the FIR or in her statement recorded under section 161 Cr.P.C. and name of the applicant was revealed through her second statement recorded under sections 161 Cr.P.C. and it appears that subsequently during investigation applicant was made accused with the aid of section 120B IPC, in my view, applicant is entitled to be released on bail.

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

13. Let the applicant-**Yogesh**, 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.

14. 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.

15. 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

Ankita