Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46266 of 2023

Applicant :- Narendra
Opposite Party :- State of U.P.
Counsel for Applicant :- Nirmla Kumari,Anita Singh,Kumari Poonam Rajpoot,Prem Babu Verma
Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Ms. Anita Singh, learned counsel for the applicant and Sri Bade Lal Bind, learned counsel for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Narendra**, seeking enlargement on bail during trial in connection with Case Crime No. 418 of 2017, under Sections 302/34 and 201 I.P.C., Police Station Shikohabad, District Firozabad.

3. The first information report of the present matter was lodged against Prempal, Narendra, Devendra and Brij Mohan. The matter was investigated and a charge-sheet was submitted against Prempal and Brij Mohan only whereas Narendra and Devendra were exonerated of the charges levelled against them. The trial in the matter has started in which Smt. Renu the first informant was examined as P.W.-1 and Dharmendra was examined as P.W.-2 who named the four accused person who were named in the first information report as accused. An application u/s 319 Cr.P.C. was filed to summon the applicant and co-accused Devendra which was allowed by the trial court vide order dated 29.05.2023 and the applicant and the said co-accused were summoned.

4. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the present matter is a matter of circumstantial evidence. There is no eye-witness to the murder. The implication of the applicant in the present matter is only on the basis of evidence of last seen. It is argued that the same is a weak type of evidence. It is argued that the applicant was exonerated during investigation who has been subsequently summoned u/s 319 Cr.P.C. It is argued that co-accused Braj Mohan and Prem Pal have been granted bail by co-ordinate Benches of this Court

vide orders dated 26.10.2017 and 01.02.2018 passed in Criminal Misc. Bail Application Nos. 40556 of 2017 and 3648 of 2018, the copy of the said orders have been produced before the Court which are taken on record. The applicant has no criminal history as stated in para 15 of the affidavit and is in jail since 26.09.2023.

5. *Per contra*, learned counsel for the State opposed the prayer for bail.

6. After having heard learned counsel for the parties and perusing the record, it is evident that during investigation the applicant was exonerated of the charges levelled against him. Subsequently two prosecution witnesses were examined who have named the applicant and three other persons as accused after which the applicant has been summoned u/s 319 Cr.P.C. Co-accused Braj Mohan and Prem Pal have been granted bail by co-ordinate Benches of this Court.

7. Looking to 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, this Court is of the view that the applicant may be enlarged on bail.

8. Let the applicant- **Narendra**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

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.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

9. 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 and send the applicant to prison.

10. The bail application is **allowed**.

Order Date :- 2.11.2023
AS Rathore

(Samit Gopal,J.)

Digitally signed by :-
ABHISHEK SINGH RATHOR
High Court of Judicature at Allahabad