

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46316 of 2023

Applicant :- Ishu Yadav @ Himanshu Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Bijay Singh Sachan

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri B.S. Sachan, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 991 of 2022, under Sections 302/201 IPC, Police Station- Chakeri, District- Kanpur Nagar, during pendency of the trial in the court below.

3. FIR of the present case was lodged against unknown person and according to the FIR, son of the applicant aged about 18 years had gone from his house to his school in the morning on 31.10.2022 but did not return and on 01.11.2022 his dead body was found near the railway track.

4. Learned counsel for the applicant submitted that FIR of the present case was lodged against unknown person and after 10 months when the statement of one Sandeep Tiwari, who claimed himself to be an eye-witness, was recorded then he disclosed the name of the applicant and two other accused persons, Sahil Yadav and Vikas Yadav.

5. He further submitted that during investigation, IO also recorded the statement of one Asha Devi, who does not claim herself to be an eye-witness and only stated that she witnessed the applicant and other accused persons along with the deceased.

6. He further submitted that bail applications of co-accused Sahil Yadav and Vikas Yadav have already been allowed by co-ordinate Bench of this Court vide orders dated 06.11.2023 and 28.06.2023 and case of applicant is exactly at par with them. He placed both the bail orders during the course of argument, which are taken on record and collectively marked as 'A'.

7. He further submitted that applicant is not having any criminal history and he is in jail since 10.09.2023.

8. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the fact that name of the applicant was surfaced in the present matter after 10 months and bail applications of co-accused Sahil Yadav and Vikas Yadav have been allowed by co-ordinate Bench of this Court and case of applicant is at par with them.

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

10. Considering the fact that present case is a case of circumstantial evidence and name of the applicant was surfaced after 10 months through the statement of Sandeep Tiwari alongwith co-accused Sahil Yadav and Vikas Yadav and co-accused Sahil Yadav and Vikas Yadav have already been released on bail by co-ordinate Bench of this Court and case of applicant is at par with them, in my view, applicant is also 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- **Ishu Yadav @ Himanshu Yadav** 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 :- 17.11.2023

KK Patel