

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48133 of 2023

Applicant :- Pradeep Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Anand Pati Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Anand Pati Tiwari, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Pradeep Kumar**, seeking enlargement on bail during trial in connection with Case Crime No. 372 of 2023, under Section 302 I.P.C., Police Station Auraiya, District Auraiya.
4. The first information report of the present matter was lodged on 13.04.2023 by Lal Singh against Neeraj Devi, Surendra and an unknown person alleging therein that his younger son Neeraj was married around 7 years back to Neeraj Devi. They had a five years old son and were living happily. One day photograph of Neeraj Devi with Surendra a boy of village on face-book was made viral of which his son got information and there was dispute between his son and his daughter-in-law. On 12.03.2023 Neeraj Devi went from the house with her lover. She was searched a lot but could not be traced. She then called her husband to different places to meet him. On 22.03.2023 at about 4 p.m. his son went to Auraiya as his wife had stated that she was in Auraiya. On 23.03.2023 at about 8 p.m. he received an information from the police station that the body of his son is lying in a vacant plot. He states that his son has been murdered by Neeraj Devi and her lover Surendra and one unknown person.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the incident in the present case is of 23.03.2023 but the first information report has been lodged after 20 days of the incident for which there is no plausible explanation regarding the delay in lodging of the report. It is argued that the implication of the applicant in the present case is only on the basis of suspicion. It is argued that the applicant was subsequently arrested on the basis of some CCTV footage where he and the deceased were seen to be consuming liquor and after that both in an intoxicated condition went away and then the applicant was seen coming alone and even at that time he was in an intoxicated condition. It is argued that subsequently the prosecution alleges that the applicant gave his confessional statement to the police on the basis of which again his implication is noted. It is argued that there

is no eye-witness to the murder. The implication of the applicant is not based on any credible, cogent and reliable evidence. It is argued that the police has shown recovery of a mobile of the deceased from the possession of the applicant but the same is a planted recovery. The applicant has no criminal history as stated in para 39 of the affidavit and is in jail since 29.04.2023.

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

7. After having heard learned counsel for the parties and perusing the record, it is evident that the applicant is not named in the first information report. There is no eye-witness to the murder. The implication of the applicant is on the basis of a CCTV records. Even therein there is nothing credible shown against the applicant.

8. 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.

9. Let the applicant- **Pradeep Kumar**, 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.

10. 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.

11. The bail application is **allowed**.

Order Date :- 24.11.2023

AS Rathore

(Samit Gopal,J.)