

Court No. - 48

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47655 of 2023

Applicant :- Yogesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Kartikeya Saran, Tarun Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Kartikeya Saran, learned counsel for applicant and Sri A.K. OJha, learned Brief Holder for State.

2. This is second bail application. The first bail application was rejected by a reasoned order on 17.03.2023 and relevant part thereof is quoted below :-

"7. Applicant is related to deceased being his son-in-law, who stayed at his house. There are two eye witnesses account and they saw that deceased was with applicant just few minutes before occurrence. It appears that witnesses have not seen applicant firing upon deceased, however, they heard voice of two firearm and when they reached near deceased, he was found dead. Conduct of alleged eye witnesses of not raising alarm or not giving any medical assistance to deceased may be a ground to show their respective conduct, however, Court cannot loose sight to the evidence collected during investigation, i.e., last seen witness account, recovery of weapon used in crime from point out of applicant, firing from a very close range as well as motive arising due to possibility of remarriage of deceased and therefore, property may not be given to applicant's wife and her sisters and this may be ground for Informant for lodging FIR against unknown persons. The chain of circumstances appears to be complete and, therefore, applicant has failed to make out a case for grant of bail."

3. In pursuance of order passed by this Court, status of trial has been put on record which shows that out of

proposed 18 prosecution witnesses, till date only 3 witnesses have been examined.

4. Learned counsel for applicant submits that it is a case of circumstantial evidence and last seen witnesses have not supported the case of prosecution and were declared hostile, therefore, applicant may be granted bail.

5. Learned Brief Holder for State has opposed the bail but could not contradict above referred submissions of learned counsel for applicant.

6. In these circumstances and taking note that applicant is in jail since 11.09.2022 as well as nature of evidence before trial Court, I find that it is a case where applicant may be released on bail.

7. Let the applicant- **Yogesh** be released on bail in **Case Crime No. 598 of 2022 under Section 302 I.P.C., P.S.- Kotwali, District- Mainpuri** 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 shall file an undertaking to the effect that he shall not seek any adjournment or exemption from appearance on the date fixed in trial. 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.

(iii) 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.

(iv) The Trial Court may make all possible efforts/endeavour and try to conclude the trial expeditiously, preferably within a period of six months after release of applicant, if there is no other legal impediment.

(v) Applicant has to appear on each and every date before learned trial Court and any application for exemption of his appearance on vague ground could be a ground for cancellation of bail by learned trial Court immediately.

8. 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.

9. The bail application is **allowed**.

10. It is made clear that the observations made hereinabove are only for the purpose of adjudicating the present bail application.

Order Date :- 21.11.2023

Nirmal Sinha