

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47201 of 2023

Applicant :- Sunil Kumar Nagar

Opposite Party :- State of U.P.

Counsel for Applicant :- Daya Shanker Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary,J.

1. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

2. This is the second bail application filed on behalf of accused/applicant-Sunil Kumar Nagar. The first bail application was rejected by this Court vide order dated 13.04.2023 passed in Criminal Misc. Bail Application No. 14156 of 2023.

3. Learned counsel for the applicant submits that after the first bail application of the applicant was rejected, during course of trial the complainant in his statement recorded before the court below has stated that on account of some disputes his wife left her and went to her parental house on account of which his parents were under mental pressure, on 17.05.2021 when he was outside the house his neighbours told him through mobile phone that his parents are not well, when he reached his house, his neighbour get them admitted in Dadri Hosptal from where they were referred to Sarvodaya Hospital where during the course of treatment they died. Learned counsel for the applicant further submits that the complainant has further stated in his statement before the court below that in the hospital one person wrote an application, he had not read the same, he does not know that who wrote the said application and it is wrong to say that he has compromised the matter with the accused persons, thus, the complainant has been declared hostile, thus, learned counsel for the applicant submits that the complainant has not supported the prosecution case, hence, there is a bleak chance that prosecution may prove its case beyond reasonable doubt and the applicant may be convicted. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been

mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 09.02.2023, having no criminal history.

4. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence, but he has not disputed that the complainant has been declared hostile before the trial court.

5. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all 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, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

6. Let applicant-**Sunil Kumar Nagar**, involved in Case Crime No. 389 of 2021, under Section 306 I.P.C., Police Station Dadri, District Gautam Budh Nagar, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(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.

7. 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 in accordance with law.

8. The bail application is **allowed**.

Order Date :- 6.11.2023

Mustaqeem.