

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47164 of 2023

Applicant :- Sanju Yadav @ Pinki

Opposite Party :- State of U.P.

Counsel for Applicant :- Vijay Prakash Chaturvedi

Counsel for Opposite Party :- G.A.,Alok Sharma

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Vijay Prakash Chaturvedi, learned counsel for the applicant, Sri Alok Sharma, learned counsel for the first informant, Sri Bare Lal Bind, learned AGA 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 Sanju Yadav @ Pinki, seeking enlargement on bail during trial in connection with Case Crime No. 113 of 2023, under Sections 302/34, 120B I.P.C. registered at P.S. Lotan, District Siddharth Nagar.
4. The F.I.R. of the matter was lodged on 15.08.2023, under Section 365 I.P.C. by Shivpujan against the Parvez and Cheenak with the allegation that his brother Rohit went from the house on 15.8.2023 at about 06:00 p.m. and did not return back. He was searched a lot but could not be traced.
5. Learned counsel for the applicant argued that the applicant is not named in the F.I.R. It is argued that the present case is a case of circumstantial evidence and there is no eye witness to the murder. It is further argued that name of the applicant has surfaced for the first time in the present matter in the confessional statement of co-accused Parvez Raza given to the police. It is argued that there is no credible evidence against the applicant and links in the chain are conspicuously missing. It is argued that there is no recovery of any incriminating material either on the pointing out or possession of the applicant, para-16 of the affidavit in support of bail application has been placed to buttress the said argument. Para-14 of the affidavit has been placed and it is argued that investigation in the matter concluded and charge sheet has been submitted against the applicant and other co-accused persons under Sections 302/34, 120B I.P.C. It is argued that the applicant is a lady and is entitled to the benefit of Section 437 Cr.P.C. It is argued that the applicant has no other criminal antecedents as stated in para-22 of the affidavit and is in jail since 17.8.2023(para-18).
6. Per contra, learned State counsel and learned counsel for the first informant opposed the prayer for bail vehemently and argued that the applicant is girl-friend of co-accused Parvez Raza who is the main assailant. It is argued that C.D.Rs. showed that there had been various calls to the deceased on which the deceased was called and then co-accused Parvez Raza murdered him. It is further argued that the applicant also has active role in the matter but in so far as murder of the deceased is concerned, the same has been committed by the co-accused Parvez Raza.
7. After having heard learned counsels for the parties and perusing the record, it is evident that the applicant is not named in the F.I.R. Present case is a case of circumstantial in nature. Implication of the applicant in

the matter is on basis of confessional statement of co-accused Parvez Raza given to the police. There is no recovery of any incriminating material either from the pointing out or possession of the applicant. Charge sheet in the matter has been submitted against the applicant and other co-accused persons. The applicant is lady and is entitled to the benefit of Section 437 Cr.P.C.

8. Case of the applicant is distinguishable with that of co-accused Parvez Raza who is the main assailant.

9. 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.

10. Let the applicant- Sanju Yadav @ Pinki, 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 she 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 her 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 her, 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 her in accordance with law and the trial court may proceed against her 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.

11. 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.

12. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 11.12.2023

Naresh