

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 56321 of 2022

Applicant :- Vikram Singh Rajpasi

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Kumar Dwivedi, Karunesh Pratap Singh

Counsel for Opposite Party :- G.A., Ramesh Kumar Yadav

Hon'ble Sameer Jain, J.

1. Heard Sri Karunesh Pratap Singh, learned counsel for the applicant; Sri R. K. Tripathi, Advocate holding brief of Sri Ramesh Kumar Yadav, learned counsel for the informant and Sri S.B. Singh, 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. 119 of 2022, under Sections 364, 302, 201 IPC, Police Station Kokhraj, District Kaushambi, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 5.2.2022 against the applicant, his wife and his brother under section 364 IPC and according to the FIR, marriage of sister of the informant was performed with the younger brother of the applicant and there was a dispute between husband and wife and on 30.1.2022 when informant found that the mobile of his sister was unreachable and he made inquiry from her husband then he did not disclose the clear facts.
4. It is further mentioned in the FIR that the informant was having suspicion that applicant alongwith his wife and brother concealed his sister.
5. Learned counsel for the applicant submitted that on the basis of suspicion, applicant has been made accused alongwith his wife and brother and he has been made accused in the present matter only because he is the Jeth of the sister of the informant.
6. He further submitted that actually due to dispute with her husband, sister of the informant resided in Allahabad and applicant is the resident of Kaushambi and therefore, he is having no

concern with the deceased and he is not even aware about the whereabouts of the deceased.

7. He further submitted that although as per prosecution case when applicant and his brother i.e. husband of the deceased were arrested then they confessed their guilt and stated that they after committing the murder of the deceased disposed off her dead body and buried her bones and ashes near the cremation place in Sandeepan Ghat and as per the prosecution on the pointing out of the applicant and his brother, some ashes were recovered which were alleged to be of the deceased.

8. He further submitted that till date, there is no evidence which can show that the alleged recovered ashes were of the deceased.

9. He further submitted that on 3.5.2023, this Court made a query from learned AGA about the chemical analysis and DNA report of the alleged recovered ashes on the pointing out of the applicant and his brother but despite of specific order passed by this Court, till date no FSL report or DNA report of the same is on record.

10. He further submitted that on previous date, learned AGA apprised the Court that on 11.5.2023 alleged recovered ashes were sent for DNA examination i.e. after passing the order dated 3.5.2023 by this Court and this fact clearly suggests that there is absolutely no evidence available against the applicant on record.

11. He further submitted that applicant is although having criminal history of one case of section 307 I.P.C. but criminal history of the applicant has been explained in the instant bail application and in the present matter he is in jail since 6.2.2022 i.e. for more one and half year.

12. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that applicant is the Jeth of the deceased and on the pointing out of the applicant and his brother i.e. husband of the deceased, ashes of the deceased were recovered but both could not dispute the fact that there is no report till date, on record which can show that alleged recovered ashes were of the deceased and they further could not dispute the fact that during investigation, the alleged recovered ashes could not be sent for chemical analysis or DNA examination and after order of this Court dated 3.5.2023 it was sent for DNA examination on 11.5.2023 and even DNA report, till date is not on record and applicant is in jail since 6.2.2022.

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

14. Although it appears that allegation against the applicant is that he alongwith his brother and wife committed the murder of the wife of his brother but it also appears that except the confessional statement of the applicant and co-accused and recovery of the alleged ashes of the deceased on the pointing out of the applicant and husband of the deceased, there is no other evidence against the applicant on record and till date, there is no evidence on record which can show that the alleged recovered ashes were of the deceased.

15. Further, on 3.5.2023 this Court directed the learned AGA to produce the DNA report, if any on record of the ashes alleged to have been recovered on the pointing out of the applicant and his brother but as per the instructions of learned AGA after order dated 3.5.2023 passed by this Court, the I.O. concerned sent the alleged recovered ashes and bone which were alleged to have been recovered on the pointing out of the applicant and co-accused for DNA examination and till date in spite of the repeated order passed by this Court the DNA report is not on record. On 25.8.2023, this Court granted three weeks and no more further time to the learned AGA to seek instructions with regard to the DNA report and therefore, it appears that ample opportunity has been given to the State but in spite of that till date, the DNA report with regard to the alleged recovered ashes and bones of the deceased is not on record and therefore, it appears that till date only evidence against the applicant is his confessional statement and statement of the co-accused persons.

16. Further, although applicant is having criminal history of one case of section 307 IPC but criminal history has been explained in the affidavit filed in the instant bail application and he is in jail in the present matter since 6.2.2022 i.e. for more than one and half years.

17. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be released on bail.

18. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

19. Let the applicant-**Vikram Singh Rajpasi**, 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.

20. 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.

21. 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.

22. It is open either for informant or the State to move a bail cancellation application before this Court if after DNA examination of the alleged recovered ashes and bones were found to be of the deceased.

Order Date :- 26.10.2023

Ankita