

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47513 of 2023

Applicant :- Ravi Kushwaha

Opposite Party :- State of U.P.

Counsel for Applicant :- Kamta Prasad, Mahesh Prasad Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri M.P. Yadav, learned counsel for the applicant and Dr. S.B. Maurya, 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. 80 of 2023, under Sections 302, 201, 120-B IPC, Police Station- Bisanda, District- Banda, during pendency of the trial in the court below.
3. FIR of the present case was lodged against unknown person on 04.03.2023 and according to the FIR, son of the informant had gone alongwith the applicant and one Mahesh on 03.03.2023 at about 8:45 p.m. in the night and did not return and next day at about 7:00 a.m. in the morning his dead body was recovered from the filed.
4. Learned counsel for the applicant submitted that on the basis of false allegation, applicant has been made accused in the present matter and except the evidence of last seen and recovery of one axe, there is no evidence against the applicant on record. He further submitted that it is a case of circumstantial evidence and although, as per the the prosecution, applicant was having illicit relationship with the wife of the deceased, therefore, he committed the murder of the deceased but if applicant was having illicit relationship with the wife of the deceased then there was no occasion for the deceased to accompany him and further as per the prosecution, along with the applicant and deceased one Mahesh also accompanied them but during investigation, he was made witness and wife of the deceased was replaced and charge-sheet was filed against the applicant and wife of the deceased.
5. He further submitted that applicant is not having any criminal history and he is in jail since 23.06.2023.

6. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case of circumstantial evidence and there is last seen evidence against the applicant and applicant was having illicit relationship with the wife of the deceased, therefore, he was having motive to commit the instant crime.

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

8. It is a case of circumstantial evidence and from the record, it reflects that applicant was made accused in the present matter on the basis of last seen evidence and according to the prosecution case, applicant and one Mahesh had gone along with the deceased but on the way, Mahesh had gone other way and thereafter dead body of the deceased was recovered and motive for the crime as per the prosecution is that applicant was having illicit relationship with the wife of the deceased, therefore, he committed the murder of the deceased but I find force in the argument advanced by learned counsel for the applicant that if applicant was having illicit relationship with the wife of the deceased then there was no occasion for the deceased to went alongwith the applicant.

9. Further, although, according to the prosecution, applicant also confessed his guilt and from his possession one axe was recovered but there was no blood on the axe therefore, mere recovery of axe does not shows that applicant involved in the present crime.

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

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

12. Let the applicant- Ravi Kushwaha 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.

13. 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.

14. 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.

Order Date :- 7.11.2023

KK Patel