

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47476 of 2023

Applicant :- Jogendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Vivek Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Vivek Singh, learned counsel for the applicant and Sri Ajeet Kumar Madhesiya, learned Brief Holder, for the State.
2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.68 of 2021, S.T.No.925 of 2021, under Section 302 IPC, Police Station Mawana, District Meerut during pendency of the trial.
3. FIR of the present case was lodged against the applicant and one unknown person on 11.2.2021 and according to the FIR, the uncle of the informant had gone from his house on 10.2.2021 but did not return back to his home. It is further mentioned in the FIR that on 10.2.2021 at about 4.00 PM in the evening applicant sent a photographs of his uncle to the brother of the informant, namely, Sonu and also informed him on phone that the uncle of the informant is with him and his friends were at his tube well. It is further mentioned in the FIR that on 10.2.2021 at about 12.00 PM in the afternoon the dead body of the uncle of the informant was found and informant is having suspicion that applicant along with his unknown associates committed his murder.
4. Learned counsel for the applicant submits that it is a case of circumstantial evidence and except the evidence of last seen, there

is no other evidence against the applicant on record.

5. He further submits that applicant has been made accused in the FIR of the present case on the basis of the alleged photographs of the deceased and phone call of the applicant to the brother of the informant but during investigation no such photographs of the deceased could be recovered.

6. He further submits that during investigation when the statements of some relatives of the deceased were recorded on 18.2.2021 then they also stated that they have witnessed the deceased along with the applicant at the tube well of applicant on 10.12.2021 but their statements appear to be false and no reliance can be placed on such version.

7. He further submits that applicant is having criminal history of Section 379 IPC which has been explained in the affidavit filed in support of the instant bail application and in the present matter he is in jail since 7.3.2021.

8. Per contra, learned AGA although opposed the prayer for bail but could not dispute the fact that except the last seen evidence, there is no other evidence against the applicant on record and applicant is in jail in the present matter since March, 2021, i.e., for the last more than 2-1/2 years.

9. However, learned AGA further pointed out that apart from case under Section 379 IPC, applicant is also having criminal history of two other cases but he fairly conceded that both the cases were of minor offences relates to Sections 504 and 506 IPC.

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

11. Considering the fact that it is a case of circumstantial evidence and only evidence against the applicant is of last seen evidence and he is in jail since March, 2021, i.e., for the last more than 2-1/2 years, in my view, applicant is entitled to be released on bail.

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

13. Let the applicant-**Jogendra** 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.

14. 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.

15. 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 :- 22.11.2023/SKM