

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47826 of 2023

Applicant :- Musarraff

Opposite Party :- State of U.P.

Counsel for Applicant :- Shailendra Singh, Abhishek Singh

Counsel for Opposite Party :- G.A., Prashant Ojha

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Abhishek Singh, learned counsel for the applicant, Sri Prashant Ojha, learned counsel for the first informant and Sri Bade Lal Bind, learned counsel 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- **Musarraff**, seeking enlargement on bail during trial in connection with Case Crime No. 437 of 2023, under Section 306 I.P.C., Police Station Katghar, District Moradabad.
4. The first information report of the present matter was lodged on 02.09.2023 by Farooq Ahmad against the applicant, 11 other persons and some unknown person alleging therein that his brother Mohd. Haron @ Nawajish Khan was a student of Ist year in Muslim Degree College. He had a friend in the school who was a girl with whom he had friendship and used to talk to her. She called him on phone and asked him to come near Hindu College on 29.08.2023. Her elder sister was also present with her. 10-15 boys were present there since before lying in wait. When his brother reached Miglani Cinema they threatened him through the girls and kidnapped his brother by making him sit on a bike and took him towards Peetal Nagri near the house of one Arif where the named accused persons including the applicant and 2-3 unknown persons were present. They assaulted his brother, called a barber and got his head shaved, blackened his face and also got his eyebrow shaved and then they one after the other urinated on his face and exhorted that he may drink the urine while taking the name and assaulted him. When time passed away and the brother of the informant did not return back then he got worried about it then his father call on the mobile of his brother but he did not receive the call whereas some other person picked the call and told him that his son is with him and if he wants to save him, he would come

there immediately. They snatched away his mobile, bag and transferred money through paytm in their accounts. As the house of the informant was far away his father called up his son-in-law Anees and told him about it and requested him to go there and save his brother-in-law's life on which Anees went to the house of Arif and introduced himself on which the said persons assaulted him. They also assaulted the informant and took away money from his pocket. He pleaded them to leave him and his brother on which they assaulted them and threatened him on not lodging any report. Musarraff the applicant told them that his father is in police and they cannot do anything to him. As soon as they took Mohd. Haroon and were proceeding towards the house his brother jumped into Ram Ganga river at Gulab Badi by stating that he is very much ashamed and not in a position to face the society. His brother-in-law then called the police on 112 number after which his search was launched. On 30.08.2023 dead body of his brother was recovered having injuries. The first information report has thus been lodged.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that common and general role has been assigned to 12 named persons including the applicant and some unknown persons. It is argued that the deceased was not found to have received any external injury on the body and the cause of death was opined as asphyxia as a result of antemortem drowning. It is argued that Anees the eye-witness of the incident although names the applicant along with co-accused Ikram, Zeeshan Saifi, Musaraff, Talib and Guddu but does not assign any role to the applicant. Common & general role has been assigned to him. It is argued that co-accused Ikram has been granted bail by a co-ordinate Bench of this Court vide order dated 02.11.2023 passed in Criminal Misc. Bail Application No. 44683 of 2023, the copy of the said order has been produced before the Court which is taken on record. The applicant has no criminal history as stated in para 19 and is in jail since 17.09.2023.

6. *Per contra*, learned counsel for the first informant and learned counsel for the State vehemently opposed the prayer for bail. It is argued that the applicant is named in the first information report. The eye-witness Anees has named the applicant and has also stated that when he was pleading for getting the deceased released, the applicant stated of not releasing him. It is argued that Asif an independent eye-witness has also been interrogated. It is argued that there is recovery of purse and mobile of the deceased from the possession of the applicant. It is argued that the incident is a very cruel incident since the deceased was a friend of the sister of the accused he

was mercilessly being treated in a very inhuman manner due to which he committed suicide. It is argued that as such the bail application be rejected.

7. After having heard learned counsel for the parties and perusing the record, it is evident that the applicant is named in the first information report and also in the statement of the eye-witness Anees. The applicant has been given role of participation in the incident. The deceased was treated in a very inhuman & cruel manner by the accused persons including the applicant just because of the reason that he was a friend with a girl from the house of the accused persons. There is recovery of a purse and a mobile of the deceased from the possession of the applicant. It cannot be said that the applicant had no motive to commit the aforesaid offence. No ground for bail is made out.

8. Looking to the facts and circumstances of the case, this Court does not find it a fit case for bail, hence, the bail application is **rejected**.

Order Date :- 24.11.2023
AS Rathore

(Samit Gopal,J.)