

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47809 of 2023

Applicant :- Ashwini Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Satyendra Narayan Singh, Satya Prakash Singh

Counsel for Opposite Party :- G.A., Rajendra Rai

Hon'ble Sameer Jain, J.

1. Heard Sri Satyendra Narayan Singh, learned counsel for the applicant; Sri Rajendra Rai, 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. 308 of 2019, under Sections 302, 201, 366, 120B IPC, Police Station Kotwali, District Azamgarh, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 4.9.2019 under sections 302 and 201 IPC, against unknown persons and according to the FIR on 3.9.2019 an unknown dead body was found near shiv temple in a sack.

4. Learned counsel for the applicant submitted that after lodging FIR of the present case dated 4.9.2019 investigation was started but during investigation, unknown dead body could be identified nor any person could be made accused and thereafter in the year 2019, final report was filed by the police but suddenly after four years on 23.7.2023 a FIR was lodged by one Harikesh against the applicant and co-accused Sachin under section 366 IPC with the allegation that on 25.8.2019 his daughter aged about 28 years had gone from her house for Varanasi but did not return and on 11.9.2019 he lodged a missing report at P.S. Phoolpur, District Varanasi but till date, his daughter could not be traced but now he received an information that applicant and co-accused Sachin used to make conversation with his daughter and they have taken her under the false promise of marriage and concealed her.

5. He further submitted that pursuant to the FIR dated 23.7.2023 lodged by Harikesh, applicant was arrested and he confessed his guilt and stated that way back in the year 2019, he alongwith co-

accused Sachin committed the murder of the daughter of the informant and thereafter present case was connected with the case relates to the FIR dated 23.7.2023 and it was revealed that the unknown dead body which was recovered in the year 2019 near Shiv Temple in a village was of the daughter of the informant.

6. He further submitted that quite dramatically after four years, applicant has been made accused in the present matter only on the basis of his confessional statement.

7. He further submitted that it is quite strange that father of the deceased remained silent for four years and after four years, he raised objection against the applicant and co-accused Sachin with regard to his daughter who was missing since the year 2019.

8. He further submitted that co-accused Sachin has already been released on bail by the co-ordinate Bench of this Court vide order dated 6.11.2023 passed in Crl. Misc. Bail Application No. 47195 of 2023 and on merit case of the applicant is at par with him, copy of bail order of co-accused Sachin has been produced by learned counsel for the applicant before this Court which is taken on record and marked as 'A'.

9. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 20.8.2023.

10. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that an innocent girl i.e daughter of Harikesh has been murdered by the applicant and co-accused Sachin and name of the applicant could not be earlier revealed as earlier it could not be revealed to the informant that applicant and co-accused used to talk with his daughter and after four years when he came to know this fact then he lodged the FIR of the present case.

11. Learned counsel for the informant further submitted that applicant confessed his entire guilt in his confessional statement but neither counsel for the informant nor learned AGA could dispute the fact that except confessional statement of the applicant before the police, there is no other evidence against the applicant on record and on the basis of suspicion for the first time, Harikesh, father of the deceased raised suspicion against the applicant and co-accused Sachin. They further could not dispute the fact that co-accused Sachin has already been released on bail and on merit case of applicant is at par with him.

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

13. Considering the fact that applicant was made accused in the present matter after four years, through his confessional statement and except the confessional statement of the applicant, there is no evidence against him on record and co-accused Sachin has already been released on bail and case of applicant is at par with him, in my view, applicant is entitled to be released on bail.

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

15. Let the applicant-**Ashwini Kumar**, 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.

16. 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.

17. 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 :- 8.11.2023

Ankita