

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48239 of 2023

Applicant :- Gaurav Dohre And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Akhilendra Singh, Prabhat Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Prabhat Kumar Singh, learned counsel for the applicants and Sri R.N. Srivastava, learned AGA for the State.
2. The instant bail application has been filed on behalf of the applicants seeking release on bail in Case Crime No. 709 of 2023 under section 302 IPC, Police Station Auraiya, District Auraiya.
3. FIR of the present case was lodged on 27.7.2023 against five persons (non-applicants) and two unknown persons. According to the FIR, on 26.07.2023 nominated accused persons along with their two unknown associates committed murder of brother of the informant and the incident was witnessed by Ravindra Babu and Gajendra Singh. It is further mentioned in the FIR that when both the above named witnesses screamed then Sanjay, Raj Kumar and others arrived at the spot and they also witnessed the accused persons while they were running from the spot.
4. Learned counsel for the applicant submits, applicants were not named in the FIR but during investigation when statement of the informant was recorded under Section 161 Cr.P.C., then he disclosed their names and this fact clearly suggests that specifically on the basis of false allegations, applicants have been made accused in the present matter. He further submits, however, in the FIR, names of eye witnesses were disclosed but when their statements were recorded under section 161 Cr.P.C., then, they did not state, they witnessed the incident therefore, it is a case of circumstantial evidence and as per the allegations, when the applicants were arrested, they confessed their guilt and on their pointing out, one blood stained axe, two beer cans and a pair of blood stained gloves of the deceased along with her green t-shirt and one t-shirt of applicant no.2 were recovered.
5. He next submits, on the basis of false and planted recovery, applicants have been made accused in the present matter. He

further submits from the recovery memo which has been annexed as Annexure 5 to the affidavit, it reflects that recovery was made with the help of divers but it could not be reflected from perusal of the recovery memo that whether recovery was made from any river or not and this fact shows that on the basis of vague recovery, applicants have been made accused in the present matter.

6. He further submits that except the confessional statement of the applicant and the above noted recovery, there is no other evidence against them. He further submits applicants are not having any criminal history and they are in jail since 28/7/2023.

7. *Per contra*, learned A.G.A. opposed the prayer for bail but he could not dispute the arguments on fact as advanced by learned counsel for the applicant.

8. I have heard all sides and perused the record of the case.

9. However, from the record, it is reflected that it is a case of circumstantial evidence and applicants are not named in the FIR and when statement of the informant was recorded, then he disclosed the names of the applicants, thereafter, it is alleged that after arrest, they confessed their guilt and from their pointing out, with the help of divers, some articles of the deceased were recovered but from the recovery memo, it could not be reflected that whether the recovery was made either from a pond or from a river.

10. Further, from the record, it is reflected that except the confessional statement of the applicant and the above noted recovery, there is no other evidence against the applicants on record. Further, applicants are not having any criminal history and they are in jail since 28/7/2023.

11. Therefore, considering the facts and circumstances of the case as discussed above, in my view, at this stage, merely on the basis of alleged recovery, *prima facie*, it cannot be said that applicants were involved in commission of the crime in question, therefore, they are entitled to be released on bail.

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

13. Let the applicants **Gaurav Dohre** and **Sudhanshu Dohre** be released on bail in the aforesaid case on furnishing personal bonds and two sureties each in the like amount to the satisfaction of the

court concerned with the following conditions:-

(i) The applicants shall appear before the trial court on the dates fixed, unless their personal presence is exempted.

(ii) The applicants 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 applicants shall not indulge in any criminal and anti-social activity.

14. In case of breach of any of the above conditions, the prosecution will be at liberty to move an application before this Court for cancellation of bail of the applicants.

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 :- 4.12.2023

Madhurima