

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48037 of 2023

Applicant :- Rukhshad @ Pahalwan

Opposite Party :- State of U.P.

Counsel for Applicant :- Vidya Prakash Singh

Counsel for Opposite Party :- G.A.,Amit Kumar

Hon'ble Sameer Jain,J.

1. Heard Sri V.P. Singh, learned counsel for the applicant, Sri Amit Kumar, learned counsel for the informant and Sri Shatrughna Yadav, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 482 of 2022, under Sections 302, 364, 201, 34 IPC, Police Station- Muradnagar, District-Ghaziabad, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 02.08.2022 against applicant and co-accused Vakeel and according to the FIR, on 29.07.2022 the nephew of the informant was missed somewhere and on 30.07.2022, informant lodged a missing report in this regard and subsequently he came to know that on 29.07.2022 in the afternoon applicant and co-accused Vakeel has taken his nephew from his house.
4. It is further mentioned in the FIR that applicant is the brother-in-law (sadu) of the nephew of the informant and due to his illicit relationship with his sister-in-law(wife of the applicant), applicant alongwith co-accused Vakeel committed the murder of the nephew of the informant.
5. Learned counsel for the applicant submitted that totally on the basis of false allegation and suspicion, applicant has been made accused alongwith co-accused Vakeel in the FIR of the present case.
6. He further submitted that FIR of the present case was lodged on 02.08.2022 and before lodging the FIR of the present case, on 30.07.2022, informant lodged a missing report but at that time he did not raise any suspicion against the applicant.

7. He further submitted that immediately after the FIR on the same day i.e. 02.08.2022 applicant and co-accused Vakeel were arrested and thereafter as per the prosecution, they confessed their guilt and on their joint pointing out dead body of the deceased was recovered from sugarcane field. He further submitted that from the perusal of the recovery memo, it appears that at that time when applicant and co-accused Vakeel were taken for the recovery of dead body, they were in police custody and dead body was recovered from an open field, which was accessible to all. He further submitted that merely on the basis of recovery of the dead body of the deceased, at this stage, it cannot be said that applicant committed the murder of the deceased. He further submitted that except the motive and suspicion, there is no other cogent evidence against the applicant on record.

8. He further submitted that bail application of co-accused Vakeel has been allowed by the co-ordinate Bench of this Court and his bail order has been annexed alongwith the instant bail application and except motive, on merit, case of applicant is at par with him.

9. He further submitted that although, applicant is having criminal history of 13 cases but his criminal history has been explained in the supplementary affidavit and in the present matter, he is in jail since 03.08.2022, i.e. for more than a year.

10. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that applicant is harden criminal and his is having criminal history of about 13 cases and he was having motive to commit the murder of the deceased as deceased was having illicit relationship with the wife of the applicant but both the counsels could not dispute the fact that except the confessional statement, recovery of dead body and last seen evidence, there is no other evidence agaist the applicant on record and alleged recovery of the dead body was made on the joint pointing out of the applicant and co-accused Vakeel from an open field, which was accessible to all.

11. They further could not dispute the fact that bail application of co-accused Vakeel has been allowed by co-ordinate Bench of this Court and applicant is in jail in the present matter for more than a year.

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

13. From the record, it appears that it is a case of circumstantial

evidence and applicant was made accused in the present matter on the basis of last seen evidence and on the ground that deceased was having illicit relation with his wife, therefore, he committed his murder and apart from the above two discussed circumstances, as per the prosecution, when the applicant was arrested then he also confessed his guilt and on the joint pointing out of applicant and co-accused Vakeel, dead body of the deceased was recovered from sugarcane field and from the recovery memo, it reflects that the sugarcane field was an open field and it was accessible to all.

14. Further, co-accused Vakeel has been released on bail and except the motive, on merit, case of applicant is at par with him. Further, however, applicant is having criminal history of about 13 cases but his criminal history has been explained in the supplementary affidavit.

15. Law is settled that merely on the basis of criminal history, bail application of an accused should not be dismissed, if otherwise case of bail is made out.

16. Further, applicant is in jail in the present matter since 03.08.2022 i.e. for more than a year.

17. Therefore, considering the facts and circumstances of the case discussed above, particularly the long incarceration of the applicant of more than a year, in my view applicant is entitled to be released on bail.

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

19. Let the applicant- **Rukhshad @ Pahalwan** 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.

20. 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.

21. 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 :- 24.11.2023

KK Patel