

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47665 of 2023

Applicant :- Anil Rajak

Opposite Party :- State of U.P.

Counsel for Applicant :- Man Mohan Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Man Mohan Mishra, learned counsel for the applicant, Sri Ajay Singh, learned AGA-I 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 Anil Rajak, seeking enlargement on bail during trial in connection with Case Crime No. 219 of 2022, under Sections 302, 120-B I.P.C., registered at Police Station Noida Sector 24, District Gautam Budh Nagar.
4. Learned counsel for the applicant at the very outset submits that co-accused Sunil Sah has been granted bail by a co-ordinate Bench of this Court vide order dated 15.02.2023 passed in Crl. Misc. Bail Application No. 7144 of 2023 (Sunil Sah Vs. State of U.P.), copy of the order is annexed as annexure 11 to the affidavit. It is argued that the case of the applicant is identical with that of co-accused who has been granted bail and as such he claimed parity. It is further argued that case of the applicant is also of conspiracy. It is further argued that the applicant has no criminal history as stated in para 29 of the affidavit and is in jail since 20.06.2022.
5. Per contra, learned counsel for the State opposed the prayer for bail but could not dispute the fact that the said co-accused has been granted bail.
6. After having heard learned counsels for the parties and perusing the records, it is evident that the order of co-accused Sunil Sah has been granted bail which reads as under:-

"1. List has been revised.

2. Heard Shri Ravi Prakash Pandey, learned counsel for the applicant and Shri Ankit Saran, learned counsel for the informant as well as Shri R.P. Patel, learned A.G.A. for the State and perused the record.

3. Applicant seeks bail in Case Crime No.219 of 2022, under Sections 302 and 120B I.P.C., Police Station Noida Sector-24, District Gautam Budh Nagar, during the pendency of trial.

4. As per prosecution story, the applicant and co-accused person Anil Rajak @ Rajeet Shah are having enmity with the deceased person as they suspected that their sister Savita had committed suicide owing to the relationship with the deceased person, as such between 29/30.05.2022, there was no contact with the deceased person and they suspected that the applicant and co-accused person have committed his murder by assaulting him in his head. The informant had come to lodge the FIR after the postmortem and committing the last rites of his son.

5. Learned counsel for the applicant has stated that the applicant is absolutely innocent and has been falsely implicated in the present case. The FIR is delayed by about twenty days and there is no explanation of the said delay caused. Learned counsel has placed much reliance on the G.D. No.52 of 31.05.2022/14:20 hours whereby an information has been recorded at the P.S. with respect to the death of the deceased person as a result of hanging and suicide. Learned counsel has further stated that even the inquest report prepared on 31.05.2022 does not indicate about any head injury rather it is indicated there that the deceased is suspected to have committed suicide. Learned counsel has further stated that there is nothing on record to suggest that the sister of the applicant had committed suicide. The motive itself is not prove. Learned counsel has further stated that having an ire towards the deceased person does not mean that he has committed an offence. There has to be direction and cogent evidence against him. Learned counsel has further stated that the applicant has been assigned the role of having instigated the other co-accused persons to commit the said crime. This is a blind murder and nobody has seen anybody entering or coming out of the house of the deceased. The dead body of the deceased has been retrieved after breaking open the gate of the house as it was closed from inside. Learned counsel has further stated that the said FIR has been lodged after legal consultation and taking into consideration the finding in the autopsy report that the death has been caused due to antemortem head injury. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. There is no criminal history of the applicant. The applicant is languishing in jail since 20.06.2022. In case, the applicant is released on bail, he will not misuse the liberty of bail.

6. Per contra, learned A.G.A. has vehemently opposed the bail application on the ground that there is a CDR, which categorically indicates that the applicant was in constant touch with the co-accused persons, as such is responsible for the said crime. Although, they could not indicate any evidence of direction involvement of the applicant in the said commissioning of crime. Learned counsel for the informant has fairly conceded the fact that the case of the applicant is of criminal conspiracy and the real perpetrator of crime are the other co-accused persons.

7. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, taking into consideration the fact that there is delay in lodging the FIR and there is no direct evidence to implicate the applicant, and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

8. Let the applicant- Sunil Sah involved in aforementioned case crime number be released on bail on furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

(i) The applicant will not tamper with the evidence during the trial.

(ii). The applicant will not pressurize/ intimidate the prosecution witness.

(iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The applicant shall not commit an offence similar to the offence of which he is accused, or suspected of the commission of which he is suspected.

(v) The applicant shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.

9. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

10. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses."

7. Looking to the facts and circumstances of this case, the nature of evidence, considering the fact of parity and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

8. Let the applicant **Anil Rajak**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties **(one of the sureties of the applicant will be his family member and the other to be of local person)** each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the

court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

(vii) If on any day, the applicant fails to appear before the concerned trial court, the trial court shall be free to cancel his bail on the same day itself without any further notice.

9. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

10. The bail application is ***allowed***.

Order Date :- 12.12.2023

M. ARIF/e-file

(Samit Gopal, J.)