

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48772 of 2023

Applicant :- Sunil @ Chhanga

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Rajesh Dwivedi, learned counsel for the applicant and Sri Birendra Pratap Singh, 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- **Sunil @ Chhanga**, seeking enlargement on bail during trial in connection with Case Crime No. 280 of 2023, under Sections 302, 201, 120-B I.P.C., Police Station Ghatampur, District Kanpur Nagar.
4. The first information report of the present matter was lodged on 08.06.2023 by Sushila Devi against unknown person alleging therein that her nephew Pramendra Kumar is missing since 07.06.2023 at about 5.30 p.m. He was searched a lot but could not be traced. On 08.06.2023 at about 4 a.m. some person received a whatsapp on his mobile which was the photo of some dead person and on seeing it, it was identified that the same is of her nephew Pramendra Kumar who has been murdered by some unknown persons.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. He is not named in the first information report. It is argued that the applicant is a distant relative of the deceased. It is argued that co-accused Deshraj was arrested who was the uncle / chacha of the deceased and then gave his confessional statement to the police stating therein that he with the help of Raj Bahadur Singh, Sunil @ Chhanga (the applicant) and Babloo have caused the murder of the deceased. It is argued that the implication of the applicant in the present matter is on the basis of confessional statement of co-accused Deshraj given to the police in which he is also named. It is argued that there is no credible evidence against the applicant. The present case is a case of circumstantial evidence. There is no recovery of any incriminating material either from the possession or on the pointing out of the applicant. The investigation has concluded and charge-sheet has been submitted against the applicant and 06 other persons on 14.07.2023. It is argued that co-accused Piyush Kant and Gaurav have been granted bail by a co-ordinate Bench of this Court vide order dated 02.11.2023 passed in Criminal Misc. Bail Application No. 45132 of 2023, the copy of the said order is annexed as Annexure-S.A.-3 to the supplementary affidavit dated 07.11.2023. The applicant has no criminal

history as stated in para 17 of the affidavit and is in jail since 28.06.2023.

6. *Per contra*, learned counsel for the State opposed the prayer for bail.

7. After having heard learned counsel for the parties and perusing the record, it is evident that the applicant is not named in the first information report. The matter is of circumstantial in nature. The links in the chain are conspicuously missing. There is no recovery of any any incriminating material either from the possession or on the pointing out of the applicant. The charge-sheet in the matter has been submitted. The implication of the applicant is on the basis of confessional statement of co-accused Deshraj to the police in which the applicant is named. Co-accused Piyush Kant and Gaurav have been granted bail by a co-ordinate Bench of this Court.

8. Looking to the facts and circumstances of this case, the nature of evidence 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.

9. Let the applicant- **Sunil @ Chhanga**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties 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.

10. 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.

11. The bail application is **allowed**.

Order Date :- 16.11.2023

AS Rathore

(Samit Gopal,J.)