

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48455 of 2023

Applicant :- Sonu

Opposite Party :- State of U.P.

Counsel for Applicant :- Sachin Malik, Onkar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Onkar Singh, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-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- **Sonu**, seeking enlargement on bail during trial in connection with Case Crime No. 187 of 2023, under Sections 302, 120-B, 34 I.P.C., Police Station Chhapar, District Muzaffarnagar.
4. The first information report of the present matter was lodged on 05.08.2023 by Smt. Brijesh against Jony @ Arvind and some unknown persons alleging therein that around an year back her son Kuldeep had purchased 35 *bigha* land in the village. On 04.08.2023 at about 7.40 p.m. Kuldeep with his relative Jony @ Arvind had gone on a motorcycle to give food to the servant but Kuldeep did not return back home. He is also not receiving phone. People of the village went to see Kuldeep at the filed where on the way he was found dead. She has a suspicion that Kuldeep has been murdered by Jony @ Arvind and his associates. The incident is of 8.30 p.m.
5. Learned counsel for the applicant argued that the applicant is not named in the first information report. It is argued that the name of the applicant has come in the present matter in the statement of co-accused Jony @ Arvind after 14 days of the incident on 18.08.2023 in his confessional statement given to the police wherein he states that the applicant along with other co-accused Sahir Ali and his associates had arranged a meeting with Abid in which Rs. 10 lakhs was decided to be paid for committing murder. It is argued that there is no credible and admissible evidence regarding meeting of mind between the applicant. It is argued that there is no eye-witness to the murder. The present case is a case of circumstantial evidence and the links in the chain are missing. The offence against the applicant is of alleged conspiracy only. It is further argued while placing paragraph 20 of the affidavit that there is no recovery of any incriminating material from the applicant. It is argued that the applicant has no concern whatsoever with co-accused persons. The applicant has no criminal history as stated in para 24 of the affidavit and is in jail since 19.08.2023.

6. *Per contra*, learned counsel for the State vehemently opposed the prayer for bail and argued that the applicant and other accused persons had conspired for the murder in which even money was given. It is argued that the implication of the applicant has surfaced during investigation.

7. After having heard learned counsel for the parties and perusing the record, it is evident that the present matter is a matter of circumstantial evidence. The applicant is not named in the first information report. His implication has surfaced after 14 days of the incident in the confessional statement of Jony @ Arvind given to the police. There is no recovery of any incriminating material from the applicant.

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- **Sonu**, 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 :- 9.11.2023
AS Rathore

(Samit Gopal,J.)