

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48624 of 2023

Applicant :- Hanoj Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

1. Heard learned counsel for the applicant as well as the learned AGA for the State and perused the material placed on record.

2. The instant bail application has been filed on behalf of the applicant, Hanoj Yadav, with a prayer to release him on bail in **Case Crime No. 196 of 2023, under Sections 302, 201, 120-B IPC, Police Station- Kaptanganj, District- Azamgarh**, during pendency of trial.

3. Learned counsel for applicant has submitted that bail of co-accused, Kamla Devi, has been granted by this Court vide Criminal Misc. Bail Application No. 40533 of 2023 by detailed and reasoned order on 05.10.2023 which is quoted hereinbelow:-

"1. Heard Sri Sanjay Kumar Yadav, learned counsel for the applicant; Sri Deepak Dubey, learned counsel for informant as well as the learned AGA for the State and perused the material placed on record.

2. The instant bail application has been filed on behalf of the applicant, Kamla Devi, with a prayer to release him on bail in Case Crime No. 196 of 2023 under Sections 302, 201, 120-B IPC, Police Station Kaptanganj, District- Azamgarh, during pendency of trial.

3. There is allegation in FIR that on 23.07.2023 at about 12:00 hours, co-accused, Hanoj and Heera Lal Yadav, came to the house of the informant and took the father of the informant, Indrajeet Yadav, along on their motorcycle. When his father did not returned in the night, the informant tried to contact the co-accused aforesaid on phone unsuccessfully. He contacted his uncle, Chandrajeet Yadav, who informed that he saw the deceased with the co-accused on the bear shop in the market. The informant went to their house, but they were not found. On 25.07.2023 at about 9:00 pm a pamphlet was made viral by the police station which was of the father of the informant. Thereafter, he went to the police station and recognised the sleepers and shirt of his father. After identification of dead body, post mortem and last rites of the dead body was conducted. Thereafter, the informant came to know from different sources that his father was having relationship with the sister of co-accused, Hanoj, namely, Kamla Devi, the applicant in this case for last 20 years. His father had got a house constructed in the name of the applicant,

Kamla Devi, at Azamgarh, which was sold by the applicant and her brothers, Hanoj and Heera Lal Yadav, the co-accused, on 03.07.2023. These facts were not known to father of the informant and he would have definitely opposed the sale of the house and hence the co-accused, Hanoj and Heera Lal Yadav, conspired with Kamla Devi, the applicant and after making him consume liquor caused his murder and threw his dead body on canal road.

4. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in this case for causing offence of under section 120-B IPC. He has submitted that the allegation in FIR that the informant never knew that his father has got a house constructed in the name of the applicant 20 years ago is not credible. It is also not credible that son of deceased will not know about the extra marital affair of his father for 20 years. He has submitted that there is no reliable evidence against the applicant at this stage. Before the Investigating Officer, no evidence regarding the ownership of the alleged house was produced by the informant. The incriminating recovery of the weapons has been made on pointing out of co-accused, Hanoj, from the house of co-accused, Heera Lal Yadav. The applicant has been falsely implicated in this case. She has no criminal history to her credit and is languishing in jail since 31.07.2023.

5. Learned A.G.A. and learned counsel for informant have vehemently opposed the prayer for bail of the applicant counsel for informant has brought on record the hand written photocopy of the sale deed allegedly executed by applicant in favour of one Manoj Kumar Yadav on 03.07.2023. It has further been submitted that the dispute took place between the applicant and the deceased since the applicant took the entire amount of sale consideration herself and did not pay any amount to the deceased, who was real owner of the house. Hence, the applicant conspired with co-accused persons and committed the murder of the deceased. Applicant has confessed to the aforesaid effect before the Investigating Officer in her statement under section 161 Cr.P.C. It has further been submitted that sale deed of the land in dispute was got executed by the deceased in favour of the applicant on 17.02.2010 and on the basis of the same her name has been recorded in the Khatauni. The sale deed dated 17.02.2010 and Khatauni of 1428-1433 fasli have been brought on record by the informant by means of a supplementary affidavit. The sale deed dated 03.07.2023 has also been brought on record by means Annexure No. 2 of the short-counter affidavit. It has finally been submitted by learned counsel for informant that merely because the applicant is woman, she cannot be absolved of the offence of conspiracy committed by her alongwith co-accused. He has relied upon the judgment of the Apex Court in Criminal Appeal No. 1279 of 2021 in support of his submissions.

6. After hearing the rival contentions, this Court finds that the arguments of the counsel for informant on the first blush appear to be attractive, but on closer scrutiny it fails to convince the Court. There is allegation against the applicant that she is beneficiary of a house purchased in her name by the deceased, father of the informant namely, Indrajeet Yadav. The copy of sale-deed dated 17.02.2010 brought on record, shows that the same was executed by one Shankar Yadav in favour of Kamla Devi in the year 2010. Therefore, allegation that the deceased got the house in dispute purchased in the name of the applicant 20 years ago made in the FIR is not correct. The land in dispute is recorded in khatauni brought on record which shows that it is an

agricultural land and not a constructed house or abadi. These evidence brought on record by way of counter-affidavits filed by the counsel for informant are not part of the case diary and have not been produced before Investigating Officer during investigation. The allegation that the informant never knew about the extra marital relationship of his deceased, father with the applicant for last 20 years is not credible. In the confessional statement of the applicant recorded by the police, she has admitted that the deceased used to live with her and also with his wife. In FIR, it is alleged that the applicant sold the land surreptitiously without knowledge of the deceased and usurped the entire sale consideration. Only to prevent the deceased from gaining the knowledge of the sale deed and the money received by the applicant, she got the deceased murdered with the help of co-accused in pursuance of a conspiracy. However, in the confessional statement of the applicant it has come that the deceased was aware of the sale deed and he was demanding money from the applicant and therefore she got him murdered. Clearly there is contradiction in the FIR and the confessional statement of the applicant. The ingredient for constituting offence under Section 120-B IPC is the proof agreement of commit an offence. Without proof of such an agreement, the allegation of criminal conspiracy cannot be proved.

7. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant, keeping in view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P. (Crl.) No. 5191 of 2021, judgement dated 11.7.2022 and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

8. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

9. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

10. The court below is directed to conclude the trial against the applicant, as expeditiously as possible, preferably within a period of two years."

4. Learned counsel for the applicant has submitted that the applicant is brother of co-accused noted above and he has been falsely implicated in this case on the basis of planted recovery of weapons. He had no motive or intention to get involved in this case. Learned counsel for applicant has submitted that co-accused, Kamla Devi, who had relationship with the deceased and she has already been enlarged on bail. The applicant is languishing in jail since 31.07.2023. The trial in the aforesaid case is not likely to be concluded in near future.

5. Per contra learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre-trial stage, therefore, she does not deserves any indulgence. In case the applicant is released on bail, she will again indulge in similar activities and will misuse the liberty of bail.

6. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant, keeping in view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of **Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P. (Crl.) No. 5191 of 2021, judgement dated 11.7.2022** and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

7. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

8. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

9. The court below is directed to conclude the trial against the applicant, as expeditiously as possible, preferably within a period of one year.

10. Registrar(Compliance) is directed to communicate this order to the concerned court below within ten days.

Order Date :- 16.11.2023

Abhishek