

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48668 of 2023

Applicant :- Hanisul

Opposite Party :- State of U.P.

Counsel for Applicant :- Deepak Kumar

Counsel for Opposite Party :- G.A.,Deepak Kumar Pal,Deepak Kumar Pal

Hon'ble Siddharth,J.

Heard Shri Amit Rai,holding brief of Shri Deepak Kumar, learned counsel for the applicant, Shri Deepak Kumar Pal, learned counsel for the informant and learned A.G.A.

The instant bail application has been filed on behalf of the applicant, Hanisul, with a prayer to release him on bail in Case Crime No. 53 of 2023, under Sections 302,201,120-B IPC Police Station Barhapur, District-Bijnor, during pendency of trial.

There is allegation in the First Information Report that the son of the informant went missing on 21.3.2023 from about 2 P.M.. On 22.3.2023 police informed the informant that dead body of his son is lying near brick-kiln in a village.The informant found injury on the head of deceased and his neck was tied with his *Angauchha*. Subsequently statements of the informant and other witnesses, namely,Rajeev Kumar, Sanjiv and Dhan Singh were recorded under section 161 Cr.P.C., and name of the applicant, co-accused, Vashim, Hishamunddin and Amir came to light. One Swift Desire Car and iron chain was recovered from co-accused, Wasim, which was allegedly used in the alleged crime. Co-accused. Wasim implicated the applicant and Hisamuddin and stated that they accompanied him and helped him disposing of dead body of the deceased.

Learned counsel for the applicant has submitted that implication of the applicant is unfounded. He had no motive to commit alleged offence. He has been implicated only because he is brother of the co-accused, Wasim.Co-accused, Amir Suhail, has

already been enlarged on bail vide order dated 18.8.2023 in Criminal Misc. Bail Application No. 30028 of 2023 by the coordinate Bench of this court. It is a case of circumstantial evidence.

Learned counsel for the informant has vehemently opposed the bail prayer of the applicant and has submitted that investigating officer has collected C.C.T.V. footage of 21.3.2023 wherein co-accused, Amir Suhail is seen going towards house of the Amir. On the same day i.e, 5.30 P.M.co-accused, Wasim is also seen going in Swift Car towards the place of incident after putting the dead body of the deceased in dicky of his car.He was seen returning at 6.30 P.M. from forest from the same car. At 4.59 P.M. applicant , co-accused Hisamuddin and Wasim are seen coming on foot from Gher of co-accused, Wasim wearing the same cloth which was recovered from Swift car subsequently. He has submitted that C.C.T.V. footage clearly proved implication of the applicant in this case. Role of co-accused, Amir Suhail, was different, who has been enlarged on bail by the coordinate Bench of this Court..

Learned A.G.A. has opposed the bail prayer of the applicant but could not dispute the aforesaid facts.

After hearing the rival, contentions, this court finds that the applicant has been implicated on the basis of confessional statement of co-accused, Wasim. There is no motive why he committed alleged offence. In the C.C.T.V. footage also he is not seen committing alleged offence or loading dead body of the deceased in the car or going to drop the same. When co-accused, Wasim returned in the aforesaid car, applicant was not seen in the car. There is no reliable evidence against the applicant at this stage. It appears to his first implication.

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping 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 recent judgment dated 11.07.2022 of the Apex Court in the case of **Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021**; considering 5-6 times overcrowding in jails over and above their capacity by the under trials 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

Let the applicant 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
4. That 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;
5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 to ensure presence of the applicant.
6. 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

Order Date :- 1.12.2023

Atul kr. sri.