

**Court No. - 69**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 48739 of 2023

**Applicant :-** Naresh Kumar

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Rajat Kumar Shukla

**Counsel for Opposite Party :-** G.A.,Shruti Malviya

**Hon'ble Samit Gopal,J.**

1. List revised.
2. Heard Sri Rajat Kumar Shukla, learned counsel for the applicant, Ms. Shruti Malviya, learned counsel for the first informant and 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 Naresh Kumar, seeking enlargement on bail during trial in connection with Case Crime No. 528 of 2017, under Sections 302, 120-B I.P.C., registered at Police Station Shikohabad, District Firozabad.
4. The FIR of the matter was lodged on 16.07.2017 by Head Constable Geetam Singh against the applicant and six other persons alleging therein that he is posted at Police Station Shikohabad, District Firozabad. He resides in a rented house of K.K. Yadav in village Shankarpuri Kasba along with his son Raghuvendra Singh. Raghuvendra Singh had a dispute with his wife Kavita. On 04.06.2017 at about 08:00 am he went to his duty and his son Raghuvendra stayed in the house. The landlord and other tenants went to take bath at Ganga Dusshhera. At about 11:50 am Kavita the wife of his son Raghuvendra called him and stated that Raghuvendra was not receiving her call and then he also called Raghuvendra but he is not taking up the phone despite many efforts. On a suspicion he went on the official vehicle along with Constable Anil Kumar and Virendra Singh to the house and found Raghuvendra hanging from a plastic rope with his knee on the floor. He with other Constables brought him down immediately and took him to the hospital where the doctor declared him dead. He then got the inquest conducted and cremated him. Jeetu told him that on 15.04.2017 Jaipal and his elder brother Naresh Kumar

the applicant came to the Sashural of Raghuvendra where Kavita and her family members took him in a room and stated that they would teach a lesson to Raghuvendra on which Jeetu tried to stop them but they threatened him with life. On 02.06.2017 Jaipal along with Pushplata came to the village. On 04.06.2017 at about 07:00 am Jaipal and Naresh went from the house by stating that they had been going out from work and returned back at 04:00 pm by covering their faces. They were quite disturbed and stated to the daughter of the informant that Raghuvendra her brother is calling. Pushplata told about it to him. Raghuvendra has been murdered by the accused persons.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that there is no eye witness to the murder. The deceased was found to have received a ligature mark on his body without any other bodily injury and the cause of death was opined as asphyxia due to shock and coma. It is argued that the deceased was not found to have received any bodily injury on his body or any internal organs were damaged. It is argued that the matter was investigated and then a final report dated 29.10.2017 was submitted after which a protest petition dated 10.01.2018 was filed by the informant which was dismissed under Section 203 Cr.P.C. vide order dated 14.11.2018. Subsequently another/second protest petition dated 31.10.2019 was filed on which vide order dated 07.11.2019, the applicant and other accused persons were summoned to face trial for offences under Sections 302, 120-B IPC. It is argued that against the said order, the legal remedies available to the applicant were explored. It is argued while placing para 34 of the affidavit that the applicant filed a revision against the said summoning order before the concerned District and Sessions Judge which was also dismissed vide order dated 10.05.2022. He then filed a petition being Matters Under Article 227 No. 4722 of 2022 before this Court which was also rejected vide order dated 29.08.2022, copy of the order is annexed as annexure 22 of the affidavit. The applicant then filed an anticipatory bail before this Court which was rejected on 06.04.2023, copy of the order is annexed as annexure 23 of the affidavit. Then he approached to the Supreme Court against the order rejecting the said anticipatory bail but the Apex Court rejected the said SLP vide order dated 17.08.2023 granting liberty to the applicant to apply for regular bail. He then surrendered before the court concerned. It is argued that there is no credible evidence against the applicant. The implication of the applicant in the present case is on the basis of suspicion only. The evidence is conspiracy against the applicant for which there is nothing on

record to show that there has been meeting of minds between the accused persons. He further argued while placing para 39 of the affidavit that the applicant has a criminal history of one case which is the year of 2017 under Sections 498-A, 307, 323, 506 IPC and 3/4 D.P. Act, P.S. Highway, District Mathura in which the applicant was exonerated and final report was submitted. The applicant is in jail since 21.10.2023.

6. Per contra, learned counsel for the first informant and learned counsel for the State vehemently opposed the prayer for bail. It is argued that the applicant was named in the FIR and is involved in the present case. It is argued that the applicant was summoned by the trial court on the protest petition and the summoning order is a cogent order. It is argued that the investigation concluded and although his name was exonerated but the concerned trial court summoned the applicant along with other accused persons. It is argued that the applicant is a conspirator along with other accused persons. It is argued that the prayer for bail of the applicant be rejected.

7. After having heard learned counsels for the parties and perusing the records, it is evident that after lodging of the FIR, the investigation concluded with a final report and the name of the applicant has been exonerated. Subsequently a protest petition was filed which was dismissed under Section 203 Cr.P.C. and then another protest petition was filed on which the applicant and other accused persons were summoned. There is no eye witness to the murder. There is no credible evidence against the applicant. The implication of the applicant is on the basis of suspicion only.

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 **Naresh Kumar**, 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 :- 29.11.2023**

**M. ARIF**

(Samit Gopal, J.)