

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49534 of 2023

Applicant :- Sarvesh Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Atmaram Nadiwal, Dinesh Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Shri Dinesh Kumar Yadav, learned counsel for the applicant and Shri Manoj Kumar Singh, learned Brief Holder for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.393 of 2022, under Section 302, 201, 120-B I.P.C., Police Station Ahraula, District Azamgarh, during pendency of the trial in the court below.
3. FIR of the present case was lodged by Chaukidar Ramnayan against unknown person and according to the FIR, on 15.11.2022 at about 10:00 a.m. in the morning a beheaded dead-body of a lady was found from a well.
4. Learned counsel for the applicant submits that nobody was named in the F.I.R. but during investigation, police informer informed that applicant and co-accused Prince committed the murder of the deceased as co-accused Prince was having love affair with the deceased and thereafter applicant, who is cousin brother of co-accused Prince and co-accused Prince were made accused in the present matter.
5. He further submits that as per allegation when applicant was arrested then he confessed his guilt and on his pointing out a piece of bra and bracciate of the deceased were recovered. He further

submits that except the abovementioned evidence, there is no other evidence against the applicant on record. He further submits that applicant was not having any motive to commit the instant crime and only being cousin of the principle accused Prince, he has been made accused in the present matter.

6. He further submits that when co-accused Prince was arrested then he confessed his guilt and on his pointing out the head of the deceased was recovered from the pond.

7. He further submits that the applicant is not having any criminal history and he is in jail in the present matter since 20.11.2022 i.e. for almost a year, therefore, he may be released on bail.

8. Per contra, learned Brief Holder opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

9. I have heard learned counsel for both the parties and perused the record of the case.

10. It is a case of circumstantial evidence and it appears that complicity of the applicant was revealed through the information furnished by police informer and only evidence against the applicant appears to be his confessional statement and recovery of piece of bra and alleged bracelate of the deceased on his pointing out and except this, there is no other evidence against the applicant on record. From the record, it reflects that the motive of the crime was against the co-accused Prince and on his pointing out the head of the deceased was recovered from the pond.

11. Further, applicant is not having any criminal history and he is in jail in the present matter since 20.11.2022 i.e. for almost a year.

12. Therefore, from the discussions made above, in my view, applicant is entitled to be enlarged on bail.

13. Accordingly, without expressing any opinion on the merits of

the case, the instant bail application is **allowed**.

14. Let the applicant-**Sarvesh Yadav**, be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

15. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

16. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 22.11.2023

Zafar