

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50363 of 2023

Applicant :- Sunil Gautam (Kotedar)

Opposite Party :- State of U.P.

Counsel for Applicant :- Shyam Shankar Mishra

Counsel for Opposite Party :- G.A., Bal Krishna Yadav

Hon'ble Sameer Jain, J.

1. Shri Bal Krishna Yadav, Advocate submits that he has filed his power on behalf of the informant yesterday in the Registry of this Court, therefore, his name could not be shown in the cause list.
2. Shri Shyam Shankar Mishra, learned counsel for the applicant has filed supplementary affidavit alongwith his power in Court today, which is taken on record.
3. Heard Shri Shyam Shankar Mishra, learned counsel for the applicant, Shri Amar Nath Vishwakarma, learned Brief Holder for the State-respondent and Shri Bal Krishna Yadav, learned counsel for the informant.
4. The instant application has been filed seeking release of the applicants on bail in Case Crime No.100 of 2023, under Section 302,201, 120-B I.P.C., Police Station Sujanganj, District Jaunpur, during pendency of the trial in the court below.
5. FIR of the present case was lodged against three persons (non-applicant) and according to the FIR, nominated accused persons after committing murder of the son of the informant threw his dead-body.
6. Learned counsel for the applicant submits that applicant was not named in the F.I.R. but when the statement of the informant was recorded under Section 161 Cr.P.C. then he changed the version of

the F.I.R. and stated that earlier on the basis of wrong facts, he lodged the F.I.R. and now he came to know that applicant alongwith other accused persons committed the murder of his son.

7. He further submits that after recording of the statement of the informant under Section 161 Cr.P.C., applicant was arrested and it is alleged that he confessed his guilt and on his pointing out from his house, one blood-stained wooden stick and one washed T-shirt of his son were recovered and it is alleged that on the T-shirt, it appears that some blood marks were present.

8. He further submits that as per the prosecution, the deceased was having friendship with the daughter of the applicant and therefore, applicant committed murder of the deceased.

9. He further submits that entire allegation made against applicant is totally false and baseless and merely on the basis of above-noted evidence, at this stage, it cannot be said that applicant committed the murder of the deceased.

10. He next submits that applicant is not having any criminal history and he is in jail in the present matter since 20.05.02023 i.e. more than six months, therefore, they may be released on bail.

11. Per contra, learned Brief Holder as well as learned counsel for the informant opposed the prayer for bail and submits that applicant was having motive to commit the crime, as deceased was having friendship with his daughter and even on his pointing out one blood-stained wooden stick and one washed T-shirt of his son, which was having blood-stained marks, were recovered and therefore, he should not be released on bail.

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

13. From the record, it reflects that it is a case of circumstantial evidence and during investigation when informant in his statement

recorded under Section 161 Cr.P.C. raised suspicion then applicant was made accused in the present matter.

14. Further, it reflects from the record that after confession of the applicant, on his pointing out from his house one blood-stained wooden stick and one washed T-shirt of his son were recovered and on the T-shirt some blood-stained marks were also appears to be present but till date the alleged recovered blood-stained articles could not be connected with the instant crime and after investigation charge-sheet has been submitted in the present matter.

15. Further, in my view, at this stage merely on the basis of above-noted evidence collected by the Investigating Officer during investigation against the applicant, prima-facie, it cannot be said that applicant involved in commission of the instant crime.

16. Further, applicant is not having any criminal history and he is in jail in the present matter since 20.05.02023 i.e. more than six months

17. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be enlarged on bail.

18. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

19. Let the applicant-**Sunil Gautam (Kotedar)**, 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.

20. 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.

21. 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 :- 24.11.2023
Zafar