

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49783 of 2023

Applicant :- Rahul And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajeev Sawhney,Raju Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Rajeev Sawhney, learned counsel for the applicants and Sri Shatrughan Yadav, learned AGA, for the State.
2. The instant bail application has been filed on behalf of the applicants with the prayer to release them on bail in Case Crime No.346 of 2023, under Sections 302,201 and 34 IPC, Police Station Haldaur, District Bijnor during pendency of the trial.
3. FIR of the present case was lodged against three persons (non applicant) and according to the FIR, when informant after receiving call of her son arrived at his home then found that he was lying dead and her daughter-in-law along with her two children were not present at home and, therefore, informant lodged FIR against her daughter-in-law and her family members on the basis of suspicion.
4. Learned counsel for the applicants submits that applicant was not named in the FIR and during investigation quite dramatically they made accused in the present matter on the basis of information furnished by unknown villagers and police informer.
5. He further submits that when the statement of first informant was recorded then she also started making allegation against the applicant and stated that in haste she lodged FIR against her daughter-in-law and her family members and in fact applicants

committed murder of her son.

6. He further submits that as per the prosecution as applicants were having friendship with the deceased and used to consume liquor and other intoxicated items and, therefore, they would have committed his murder and thereafter it is alleged that when applicants and one another accused were arrested then they confessed their guilt and on their pointing out one wooden stick was recovered.

7. He further submits that post mortem report of the deceased suggests that he sustained incised wounds and therefore, it cannot be said that alleged recovered wooden stick was used in the present crime.

8. He further submits that applicant is having criminal history of Section 323 IPC but it is a minor offence and in the present matter he is in jail since 25.8.2023.

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

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

11. It is a case of circumstantial evidence and it appears that during investigation applicants were made accused in the present matter on the basis of suspicion on the ground, they were having friendship with the deceased.

12. However, recovery of wooden stick was made from the joint possession of applicants and other co-accused but post mortem

report of the deceased suggests that deceased sustained incised wounds.

13. Further, applicant is however also having criminal history of one another case but that case is of Section 323 IPC.

14. Further applicant is in jail in the present matter since August, 2023.

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

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

17. Let the applicants-**Rahul and Nipendra @ Kalwa** 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 applicants shall appear before the trial court on the dates fixed, unless their personal presence is exempted.

(ii) The applicants 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 applicants shall not indulge in any criminal and anti-social activity.

18. 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 applicants.

19. 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 :- 7.12.2023

SKM