

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50163 of 2023

Applicant :- Kanha @ Jayprakash Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Atul Kumar Singh

Counsel for Opposite Party :- G.A., Anita Singh, Prem Babu Verma

Hon'ble Samit Gopal,J.

1. Learned counsel for applicant is permitted to add the District in the bail application in the array of parties during the course of the day.
2. Heard Shri Suresh Dhar Dwivedi holding brief of Shri Atul Kumar Singh, learned counsel for applicant, Ms. Anita Singh, learned counsel for first informant, Shri Ajay Singh-1, learned A.G.A. for State and perused the material on record.
3. This is the second bail application. The first bail application of the applicant was dismissed as not pressed by this Court vide order dated 02.11.2023 passed in Criminal Misc. Bail Application No. 46414 of 2023 (Kanha @ Jayprakash Singh Vs. State of U.P.) owing to some typographical error in the same.
4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Kanha @ Jayprakash Singh seeking enlargement on bail during trial in connection with Sessions Case No. 2960/2023, Case Crime No. 105/2023, under Sections 302, 34 I.P.C., registered at Police Station Basai Mohammadpur, District Firozabad.
5. The first information report of the present matter was lodged on 10.07.2023 by Smt. Rajni Devi against the Deepak @ Dipu, Chaviram, Kanha and Radheyshyam alleging therein that her husband Deepak @ Dipu used to drink liquor often and assault her. The other accused persons used to give money to her husband and used to work in her fields. Her father-in-law used to oppose it upon which her husband used to state that he would murder his father and would implicate her in the murder. He used to state that he would not give property to her and her children. On 09.07.2023 her husband Deepak @ Dipu along with other accused persons murdered father-in-law Devenddyal at about 9:00 P.M.
6. Learned counsel for applicant argued that the applicant has been falsely implicated in the present case. It is argued that the first informant is the daughter-in-law of the deceased. The motive for committing the present offence is on Deepak @ Dipu the son of the deceased and husband of the first informant. It is argued that the applicant has no motive to commit the aforesaid offence. The allegations against the applicant is that he is with other accused persons joint hands with Deepak @ Dipu and murdered his father. It is argued that on the

body of the deceased single ligature mark was found. Cause of death is due to asphyxia and a result of ante mortem strangulation. Six eye witnesses as per prosecution being Prem Shanker, Chadamilal, Sonia, Dorilal, Sushil, Shanti are present but none of the eye witnesses have seen the murder. The version as stated by them is all the accused persons came out from the room where the dead body of the deceased was found. It is argued that the applicant has no criminal history as stated in paragraph no. 18 of the affidavit in support of bail application. The applicant is in jail since 09.08.2023 and there is no likelihood of early conclusion of trial and hence, the applicant may be released on bail during pendency of trial.

7. As per contra, learned counsel for first informant and learned A.G.A. for State vehemently opposed the prayer for bail and argued that the applicant is named in the FIR and there are eye witnesses, who have seen the applicant and other accused coming out from the room where the dead body of the deceased was found.

8. After having heard the learned counsel for the parties and perusing the record, it is apparent that there is no eye witness of the murder. The applicant has no motive to commit the offence. The motive as alleged is on accused Deepak @ Dipu the son of the deceased and husband of the first informant. The deceased was found to have received single ligature mark. The case of the applicant is distinguishable with that of the co-accused Deepak @ Dipu.

9. Looking to the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial 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.

10. Let the applicant- **Kanha @ Jayprakash Singh** 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.

11. 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.

12. The second bail application is **allowed**.

Order Date :- 7.12.2023

Sharad/-

(Samit Gopal, J.)