

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50089 of 2023

Applicant :- Rajesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Vijay Bahadur Shivhare, Vishvendra Singh

Counsel for Opposite Party :- G.A., Rajesh Dutta Pandey

Hon'ble Dr. Gautam Chowdhary, J.

1. This case is nominated to this Court vide order dated 12th December, 2023 passed by Hon'ble The Acting Chief Justice. Heard Sri V.P. Srivastava, learned Senior Counsel assisted by Sri Vijay Bahadur Shivhare, Vishvendra Singh learned counsel for the applicant, Sri Rajesh Dutta Pandey, learned counsel for the informant, learned A.G.A for the State and perused the record.

2. According to the general diary entry no.26 dated 09.02.2023 an information was given by one Shiv Kumar mobile no. 8979864507 that a dead body was lying near toll plaza, upon which information the Sub-Inspector Mohit Sharma along with Head Constable 2173 Yogesh Kumar and Lady Constable No. 4555 Sunaina reached at the spot and saw the dead body in burnt state and the relatives were weeping, hurling and crying, thereafter panchayatnama was conducted and autopsy of deceased Love Rajpoot was conducted on 10.02.2023 at about 2:30 P.M. With regard to the said incident, a first information report was lodged nominating the applicant and one Monty as an accused alleging therein that on 09.02.2023 at about 08:30 P.M. the deceased told his mother that he will go to Raghunath Degree College along with the applicant and co-

accused Monty. At about 11:30 A.M. a call was made from the mobile of deceased to the mobile of the informant demanding Rs. 10 lacs as ransom by 03:00 P.M., thereafter the mobile was switch off.

3. Learned counsel for the applicant argued that the incident is alleged to have taken place on 09.02.2023 whereas post mortem was conducted on 10.02.2023 and that the F.I.R. has been lodged on 10.02.2023 and the only allegation against the applicant is that the deceased told his mother that he will go to Raghunath Degree College along with the applicant and the co-accused Monty. He further submits that after a lapse of more than one half month i.e. on 25.03.2023, the Investigation Officer collected evidence to the effect that Call Detail Record shows that the applicant and the deceased used to talk each other and in this regard, learned counsel for the applicant has submitted that the applicant and the deceased were friends and they used to talk each other and in this regard, learned counsel has drawn attention of this Court to the C.D.R. report wherein the deceased as well as the applicant have been shown talking to each other prior to the date of incident as well as on the day of incident several times since before the incident, which itself demonstrates that the applicant and the deceased were in talking terms, thus it cannot be said that only on the day of incident, the conversation took place. He further submit that on the joint possession of the applicant and the co-accused recovery of knife has been made. He further submits that the site plan shows that the dead body was recovered from arandi field whereas in the F.I.R. it has been alleged that the dead body was recovered in the field near the toll plaza and that it is highly improbable that dead body would be dragged near the toll plaza when in fact, the arandi field itself comprises of bushes. Learned

counsel further argued that in the instant case, the deceased was murdered prior to demand of ransom, which cannot be believed by a man of ordinary prudence, which itself belies the prosecution story. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 10.02.2023. He lastly submits that the co-accused namely Monty @ Ashu, who has been assigned similar role, has already been enlarged on bail by this Court vide order dated 11.10.2023 passed in Criminal Misc. Bail Application No.30617 of 2023, copy of which is annexed as Annexure-13 to the affidavit accompanying the bail application. It is thus contended that the applicant is also entitled for bail on the ground of parity also.

4. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage therefore, he does not deserve any indulgence. Learned counsel for the applicant further submits that the applicant and the co-accused persons have committed the offence and therefore, the applicant is not entitled for bail.

5. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all 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, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

6. Let applicant **Rajesh** involved in Case Crime No.35 of 2023 under Sections 364-A, 302, 201 I.P.C., Police Station Fatehpur Sikri, District Agra, be released on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(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.

7. 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 in accordance with law.

8. The bail application is allowed.

Order Date :- 15.12.2023

S.Ali