

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50613 of 2023

Applicant :- Mukesh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Pankaj Kumar Mishra, Ashwani Singh, Satyendra Narayan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Satyendra Narayan Singh, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, for the State.

2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.211 of 2023, under Sections 364, 302, 201 and 120B IPC, Police Station Civil Lines, District Etawah during pendency of the trial.

3. FIR of the present case was lodged against one Pappu alias Gandharv and according to the FIR, on 8.9.2023 the brother-in-law (jija) of the informant had taken her husband under the pretext to provide him tea but her husband did not return. It is further mentioned in the FIR that informant was having suspicion that her brother-in-law abducted her husband.

4. Learned counsel for the applicant submits that initially FIR of the present case was lodged under Section 364 IPC but after recovery of dead body of the husband of the informant case was converted under Section 302 IPC.

5. He further submits that applicant was not named in the FIR but as per allegation when he along with nominated accused Pappu alias Gandharv and Narottam was arrested then he confessed his guilt and on the pointing out of applicant, co-accused Pappu alias

Gandharv and Narottam, dead body of the deceased was recovered.

6. He further submits that actually applicant is the brother-in-law of nominated accused Pappu alias Gandharv and only due to this reason he has been made accused in the present matter.

7. He further submits that in fact nothing incriminating has been recovered either from the possession of the applicant or on his pointing out.

8. He further submits that even as per prosecution the recovery of dead body of the deceased was made on the pointing out of applicant and two other accused persons and therefore, at this stage merely on the basis of such recovery it cannot be said that applicant was also involved in commission of the instant crime.

9. He further submits that apart from recovery and confessional statement of applicant, there is no other evidence against the applicant on record.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 10.9.2023.

11. Per contra, learned AGA opposed the prayer for bail and submits that the dead body of the deceased was recovered from a pit which was concealed on the pointing out of the applicant and two other accused persons and further from the Xylo four wheeler where applicant was sitting along with two other accused persons the labour card and adhar card of the deceased was also recovered, therefore, at this stage, it cannot be said that there is no evidence against the applicant on record.

12. I have heard learned counsel for the parties and perused the

record of the case.

13. It is a case of circumstantial evidence and applicant was not named in the FIR but when he was arrested then he confessed his guilt.

14. Further, according to the prosecution, co-accused Pappu alias Gandharv and Narottam were also arrested along with applicant while they were moving from Xylo Four wheeler and thereafter all the accused persons confessed their guilt and thereafter on their pointing out, dead body of the deceased was recovered from a pit which was concealed by straw.

15. Further, from the Xylo four wheeler in which applicant was travelling along with other accused persons, the labour card and adhar card of the deceased were also recovered.

16 Therefore, from the discussions made above, it cannot be said that applicant was not involved in commission of the instant crime.

17. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is not entitled to be released on bail at this stage.

18. Accordingly, the instant bail application is **rejected** at this stage.

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 :- 28.11.2023

SKM