

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50375 of 2023

Applicant :- Smt Kavita

Opposite Party :- State of U.P.

Counsel for Applicant :- Vikram Singh Shrivastava, Amit Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Amit Kumar Srivastava, learned counsel for the applicant, Sri Ajay Singh, learned AGA-I for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Smt Kavita, seeking enlargement on bail during trial in connection with Case Crime No. 107 of 2023, under Section 302 I.P.C., registered at Police Station Bar, District Lalitpur.
4. Learned counsel for the State states that he has received instructions for which time was granted to him vide order dated 24.11.2023.
5. The FIR of the matter was lodged on 28.08.2023 by Smt. Deepa against unknown person alleging therein that on 27.08.2023 her chachi Kavita and nephew Satyam had gone to take medicine and were returning at about 12:00 noon where they found the vehicle of her chachiya sasur Mahadev standing by the side of the road and he was found lying on the road, his neck was tied with scarf. Police 112 vehicle came there and helped them and he was taken to the CHC where the doctors declared him dead.
6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the applicant is the wife of the deceased Mahadev @ Shankar. It is argued that the applicant is not named in the FIR. The implication of the applicant is on the basis of suspicion only. It is argued that the present case is a case of circumstantial evidence in which the

links of chain of circumstances are missing. It is argued that the evidence as is being relied by the prosecution is that the deceased last seen with the applicant and then the confessional statement of the applicant. It is argued that the same are totally false without any credible evidence. It is argued that there is no motive to commit the aforesaid offence. The applicant is said to be having some illicit relationship with someone due to which she indulged in the present case. It is argued that charge sheet has been submitted against the applicant and as such there are no chances of the applicant tampering with evidence or threatening the witnesses. It is argued that the applicant is a lady and she is entitled to the benefit of Section 437 Cr.P.C. He further argued that the applicant has no criminal history as stated in para 19 of the affidavit and is in jail since 29.08.2023.

7. Per contra, learned counsel for the State opposed the prayer for bail.

8. After having heard learned counsels for the parties and perusing the records, it is evident that the applicant is not named in the FIR. Her name has surfaced on the basis of suspicion only during investigation. She is the wife of the deceased. The links of chain of circumstances are missing. The applicant is a lady.

9. Looking to 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, this Court is of the view that the applicant may be enlarged on bail.

10. Let the applicant **Smt Kavita**, 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 she 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 her 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 her, 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 her in accordance with law and the trial court may proceed against her 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 bail application is ***allowed***.

Order Date :- 13.12.2023

M. ARIF

(Samit Gopal, J.)