

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51158 of 2023

Applicant :- Vishnu

Opposite Party :- State of U.P.

Counsel for Applicant :- Vandana Gupta, Ashutosh Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Ashutosh Gupta, learned counsel for the applicant and Shri R. N. Srivastava, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.115 of 2023, under Section 302, 201 I.P.C., Police Station Kosi Kalan, District Mathura, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 23.02.2023 against applicant and two others and some unknown persons and according to the FIR, on 21.02.2023 at about 5:30 in the evening co-accused Deepak and Jugendra @ Jagga has taken the brother of the informant to the shop of the applicant and thereafter on 22.02.2023 at about 4:30 in the evening his dead-body was found in a pond.
4. Learned counsel for the applicant submits that it is a case of circumstantial evidence and only evidence against applicant is that deceased came alongwith the co-accused Deepak and Jugendra @ Jagga at his shop and thereafter applicant was last seen alongwith deceased and other co-accused persons and except this, there is no other cogent evidence against the applicant on record.

5. He further submits that admittedly even as per the prosecution, the motive of the crime was against co-accused Deepak and applicant only being friend of the co-accused Deepak has been made accused in the present matter.

6. He further submits that the applicant is in jail in the present matter since 23.02.2023 i.e. for last more than nine months.

7. Per contra, learned AGA opposed the prayer for bail and submits that apart from the last seen evidence and the fact that deceased came alongwith co-accused Deepak and Jugendra @ Jagga to the shop of the applicant, other evidence against him is that as per C.D.R. Report his presence was also found near the place of incident and as he is the friend of the co-accused Deepak, therefore, it cannot be said that he was not having any motive to commit the crime.

8. Learned A.G.A. further points out that apart from the present case, applicant is also having criminal history of two other cases of Sections 452, 354, 363 and 366 I.P.C.

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

10. It is a case of circumstantial evidence and it appears that only evidence against applicant is of last seen. However learned A.G.A. points out during the course of argument that apart from evidence of last seen, as per the C.D.R. Report of the applicant, his presence was also found at the place of incident but in my view on the basis of these two evidences, which were collected by the Investigating Officer during the course of investigation, prima-facie at this stage, it cannot be said that applicant participated in the alleged crime

considering the fact that the motive of the crime is not against him but was against co-accused Deepak.

11. Further, as applicant is the friend of the co-accused Deepak, therefore, defence taken by the applicant cannot be completely brushed aside at this stage.

12. Further, however applicant is also having criminal history of two other cases but law is settled that on the basis of criminal history the bail applicaiton of an accused should not be rejected if otherwise case of bail is made out.

13. Further, applicant is in jail in the present matter since 23.02.2023 i.e. for last more than nine months.

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

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

16. Let the applicant- **Vishnu**, 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 applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

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

17. 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 applicant.

18. 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 :- 30.11.2023

Zafar