

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51895 of 2023

Applicant :- Santosh Kumar Upadhyay

Opposite Party :- State of U.P.

Counsel for Applicant :- Tarun Jha

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri vijay Singh Sengar, Advocate, filed his power on behalf of the informant today in the Court, which is taken on record.

2. Heard Sri Tarun Jha, learned counsel for the applicant, Sri Vijay Singh Sengar, learned counsel for the informant and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 362 of 2023, under Sections 306 IPC, Police Station- Jalaun, District- Jalaun, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 15.10.2023 under Section 306 IPC against applicant and his brother-in-law (sala) and according to the FIR, on 11.10.2023 a theft took place in the house of the applicant and applicant made allegation of theft against the son of the informant Rahul and applicant and his brother-in-law called him on their home and threatened him to return his entire stolen articles otherwise they will lodged a FIR against him and due to this reason, on 12.10.2023 Rahul, son of the informant, committed suicide by hanging himself.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and FIR of the present case was lodged after three days and this fact itself suggests that after three days a false story has been cooked up by the informant. He further submitted that even if allegations levelled against the applicant are accepted then also it cannot be said that due to abatement of the applicant, deceased committed suicide.

6. He further submitted that applicant is not having any criminal

history and he is in jail since 16.10.2023.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that applicant threatened the deceased to implicate him in false case of theft, therefore, he committed suicide, therefore, it cannot be said that there is no evidence of abatement against the applicant. They further pointed out that apart from the present case, applicant is also having criminal history of one case of Section 307 IPC.

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

9. However, as per the information furnished by learned AGA, apart from the present case, applicant is also having criminal history of one case of Section 307 IPC but after perusal of the FIR and other material available on record, prima facie, at this stage, it cannot be said that due to abatement of the applicant, deceased committed suicide.

10. Law is settled that merely on the basis of criminal history, bail application of an accused should not be dismissed, if otherwise, case of bail is made out.

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

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

13. Let the applicant- **Santosh Kumar Upadhyay** 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.

14. 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.

15. 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 :- 4.12.2023

KK Patel