

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51586 of 2023

Applicant :- Deepak Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Vishal Kushwaha, Neetu Singh, Rajesh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Today power has been filed by Sri Lalit Srivastava and Sri Prakash Srivastava, learned counsels on behalf of the informant in Court , which is taken on record.
2. Heard Sri Rajesh Kumar Mishra, learned counsel for the applicant, Sri Lalit Srivastava, learned counsel for the informant and Dr. S.B.Maurya, learned AGA-I for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 166 of 2023, under Sections 147, 149, 201, 364, 302 IPC, Police Station- Sasani Kotwali, District- Hathras, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and four others and according to the FIR, on 14.06.2023, father of the informant has missed somewhere and on 15.06.2023, he lodged a missing report in this regard. According to FIR, on 15.06.2023 at about 3:00 p.m. Anand Sharma and Rakesh Sharma informed the informant that on 14.06.2023 at about 1:15 p.m. in the noon, they have witnessed the father of the informant along with applicant and other accused persons while they were making conversation in front of the house of co-accused Padam Singh.
5. It is further mentioned in the FIR that with regard to a plot, some dispute was pending between father of the informant and co-

accused Padam Singh and his brother Bhavar Singh and only due to this reason, applicant alongwith them kidnapped his father with intention to commit his murder.

6. Learned counsel for the applicant submitted that FIR of the present case was lodged under Section 364 IPC and from its perusal, it appears that on the basis of suspicion, applicant has been made accused in the present matter. He further submitted that after the death of the father of the informant case was converted under Section 302 IPC.

7. He further submitted that it is a case of circumstantial evidence and there is no eye-witness account and evidence against the applicant is that he was seen alongwith the deceased and other accused persons while they were standing in front of the house of co-accused Padam Singh and when he was arrested then it is alleged that he confessed his guilt and on the joint pointing out of the applicant and co-accused Tejveer, motorcycle of the deceased and his other documents like Aadhar Card were recovered and except these two evidences, there is no other evidence against the applicant on record and on the basis of these two evidences at this stage, it cannot be said that applicant also participated in the instant crime.

8. He further submitted that as applicant is the nephew of co-accused Padam Singh and informant was having enmity with co-accused Padam Singh, therefore, applicant has been made accused in the present matter.

9. He further submits that co-accused Tejveer, the brother of the applicant, has already been released on bail by this Bench vide order dated 1.11.2023 (Annexure-15) and the case of applicant is at par with him.

10. He further submitted that applicant is not having any criminal history and he is in jail since 17.06.2023.

11. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that as on the pointing out of the applicant, motorcycle of the deceased and his other personal documents were recovered, therefore, at this stage, it cannot be said that he did not participate in the instant crime.

12. However, they further could not dispute the fact that co-accused Tejveer has already been released on bail by this Bench vide order dated 1.11.2023 and the case of applicant is at par with him.

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

14. It is a case of circumstantial evidence and it appears that except the evidence of last seen, confessional statement of the applicant and recovery of motorcycle and personal documents of the deceased on the joint pointing out of the applicant and co-accused Tejveer, there is no other evidence against the applicant on record. As far as evidence of last seen is concerned it does not inspire any confidence at this stage and I find force in the argument advanced by learned counsel for the applicant that at this stage merely on the basis of alleged recovery of motorcycle and documents of deceased, alleged to have been made from the open place, accessible to all, it cannot be said that applicant also participated in the instant crime.

15. Further, it appears that applicant is the nephew of co-accused Padam Singh and informant side was having enmity with co-accused Padam Singh and there is no direct enmity of the applicant with the informant.

16. Further, co-accused Tejveer, the real brother of the applicant, has already been released on bail by this Bench vide order dated 1.11.2023 and the case of applicant is at par with him.

17. Further, applicant is not having any criminal history and he is in jail since 17.06.2023.

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

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

20. Let the applicant-**Deepak Singh** 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.

21. 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.

22. 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 :- 2.12.2023

SKM