

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51438 of 2023

Applicant :- Bhurey @ Bhupendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Santosh Kumar Bharti, Ajai Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Ajai Kumar, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 111 of 2023, under Sections 302, 364, 201, 120-B IPC, Police Station- Mandawar, District-Bijnor, during pendency of the trial in the court below.

3. FIR of the present case was lodged against applicant and co-accused Daulat on 15.04.2023 under Section 365 IPC and according to the FIR, son of the informant aged about 20 years had gone from his house after taking dinner on 12.04.2023 at about 7:30 p.m. and thereafter did not return. It is further mentioned in the FIR that some villager informed the informant that his son was last seen on 12.04.2023 alongwith applicant and co-accused Daulat.

4. Learned counsel for the applicant submitted that on the basis of false allegation, applicant has been made accused in the present matter and it is a case of circumstantial evidence and only evidence against the applicant is the evidence of last seen, his confessional evidence, recovery of dead body and one wooden stick on the pointing out of the applicant and co-accused Nitin @ Bhole and except the above noted evidence, there is no other evidence against the applicant on record.

5. He further submitted that dead body of the deceased was recovered after more than one month and it was recovered on the joint pointing out of the applicant and co-accused Nitin @ Bhole from a river bank, which was an open place accessible to all, therefore, on the basis of such recovery, at this stage, it cannot be said that applicant involved in commission of the instant crime.

6. He further submitted that applicant is not having any criminal history and he is in jail since 01.07.2023.

7. Per contra, learned AGA opposed the prayer for bail and submitted that applicant was having strong motive to commit the murder of the deceased as deceased was having illicit relationship with his sister and on the joint pointing out of the applicant and co-accused Nitin @ Bhole dead body of the deceased was recovered. He further submitted that even on their joint pointing out, one wooden stick was also recovered, which was alleged to have been used in the crime.

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

9. The instant matter appears to be the case of circumstantial evidence and it appears that on the basis of information furnished by some villagers, applicant was made accused in the present matter alongwith co-accused Daulat and thereafter when he was arrested then as per the prosecution, he confessed his guilt and on the joint pointing out of the applicant and co-accused Nitin @ Bhole dead body of the deceased was recovered from a river bank and it is also alleged that on the joint pointing out of the applicant and co-accused Nitin @ Bhole, one wooden stick was also recovered, which was alleged to have been used in the instant crime.

10. From the record, it also reflects that one Devraj stated that he witnessed the deceased alongwith applicant and other accused persons. As from the record, it reflects that dead body of the deceased was recovered from an open place, which was accessible to all, therefore, I find force in the argument advanced by learned counsel for the applicant that merely on the basis of such recovery, *prima facie*, at this stage, it cannot be said that applicant committed the murder of the deceased and other evidence collected by the Investigating Officer against the applicant during investigation does not appear to be convincing and merely on the ground of motive, at this stage, it cannot be said that applicant is the person, who committed the murder of the deceased.

11. Further, applicant is not having any criminal history and he is in jail since 01.07.02.2023.

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

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

14. Let the applicant- **Bhurey @ Bhupendra** 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.

15. 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.

16. 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 :- 1.12.2023

KK Patel