

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51785 of 2023

Applicant :- Mool Chandra

Opposite Party :- State of U.P.

Counsel for Applicant :- Siddharth Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Siddharth Singh, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 132 of 2022, under Sections 302, 406, 506 IPC, Police Station Soraon, District Prayagraj during pendency of the trial.

3. FIR of the present case was lodged against applicant and three others on 22.03.2022 through an application under Section 156(3) Cr.P.C. dated 20.12.2021 and according to the FIR by playing fraud applicant and other accused persons got executed an agreement to sell from the husband of the informant and on 16.11.2021 when informant had gone along with her husband to the office of the Registrar then from the office of the Registrar applicant along with other accused persons have taken him under the pretext to give money and thereafter his dead body was found.

4. Learned counsel for the applicant submitted that on the basis of false allegation, applicant has been made accused in the present matter and applicant is not the beneficiary of the alleged agreement to sell executed by the deceased, which was executed in favour of co-accused Madan Singh and he was just marginal witness. He further submits that even subsequently agreement to sell was cancelled.

5. He further submits that allegation was made in the FIR that on 16.11.2021 applicant and other accused persons have taken the deceased from the office of the Registrar and same day the dead body of the deceased was found but in spite of that FIR of the present case was lodged 22.03.2022 through an application under Section 156(3) Cr.P.C. and even application under Section 156(3) Cr.P.C. was moved on 02.12.2021 i.e. after about more than two weeks and this fact clearly suggests that after two weeks a false

story has been cooked up by the informant and implicated the applicant in the present matter.

6. He further submits that even from the perusal of the FIR, it reflects that co-accused Madan Singh after ensuring the deceased to give him money has taken him, therefore, co-accused Madan Singh, in whose favour, agreement to sell was made, is the principal accused.

7. He further submits that viscera report of the deceased suggests that he died due to consumption of Ethile Alcohol, therefore, it appears that he consumed spurious liquor and only due to the reason that applicant was marginal witness in the agreement to sell, he has been made accused in the present matter.

8. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 04.10.2023.

9. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

11. It appears that FIR of the present case was lodged after several months through an application under Section 156(3) Cr.P.C. and even application under Section 156(3) Cr.P.C. was moved after more than two weeks.

12. From the record, it also reflects that it is a case of circumstantial evidence and only evidence against the applicant is the motive and evidence of last seen but even from the perusal of the record, it reflects that co-accused Madan Singh appears to be principal accused in whose favour agreement to sell was executed and in the agreement to sell applicant was marginal witness and co-accused Madan Singh was the person who after ensuring the deceased to give him money has taken him along with applicant and other accused persons.

13. As even application under Section 156(3) Cr.P.C. was moved after more than two weeks, therefore, defence taken by the applicant cannot be brushed aside at this stage.

14. Further, except motive and last seen evidence there is no other evidence against the applicant on record. Further, viscera report of

the deceased suggests that deceased died due to consumption of Ethile Alcohol, therefore, I find force in the argument advanced by learned counsel for the applicant that possibility cannot be ruled out that due to consumption of spurious liquor deceased died.

15. Further applicant is not having any criminal history and in the present matter he is in jail since 04.10.2023.

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

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

18. Let the applicant - **Mool Chandra** 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.

19. 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.

20. 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
AK Pandey