

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52645 of 2023

Applicant :- Arif

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Abu Sufiyan Azmi, Shiv Sagar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Sri Abu Sufiyan Azmi, learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. There is allegation against the named accused regarding commission of offence of kidnapping of father of the informant. Subsequently his dead body was recovered. Implication under section 302, 147, 120-B, 34 I.P.C. was further made. Learned counsel for the applicant submits that the applicant is not named in the F.I.R. and his name was surfaced in the confessional statement of the co-accused Mohit Kumar who was also not named in the F.I.R. Learned counsel for the applicant has submitted that dead body of the deceased and knife were recovered from the pointing out of the co-accused Mohit Kumar. The inquest of the dead body was conducted on 6.3.2023. The postmortem of the dead body was conducted on 6.3.2023 at about 12.50 P.M. However on the head of postmortem report the date was mentioned as 07.03.2023. Learned counsel for the applicant has further submitted that applicant was arrested on 07.03.2023 and postmortem was conducted on 06.03.2023 itself prior to his arrest. There is no evidence against the applicant except the confessional statement of the co-accused Mohit Kumar, who has already been enlarged on bail by co-ordinate Bench of this Court vide order dated 11.10.2023 passed in Criminal Misc. Bail Application No. 40245 of 2023, copy of which order is annexed as Annexure-6 to the affidavit accompanying the bail application. Apart from the co-accused Mohit Kumar, another co-accused Shatrughan @ Ramsahodar has been granted bail vide order dated 3.8.2023 in Criminal Misc. Bail Application No. 31733 of 2023. The applicant is in jail since 7.3.2023. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also

been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him.

3. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence.

4. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

5. Let applicant **Arif** involved in S.T. No. 141 of 2023, Case Crime No. 0023 of 2023 under Sections 364, 147, 302, 34, 120-B I.P.C., Police Station Dakaur, District Jalaun, be released on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law,

under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

6. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail in accordance with law.

7. The bail application is allowed.

Order Date :- 8.12.2023

S.Ali