

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52421 of 2023

Applicant :- Smt. Babita

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Manoj Kumar, Advocate holding brief of Sri Manish Kumar, learned counsel for the applicant and Sri Ajit Madheshiya, learned Brief Holder for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 0200 of 2023, under Sections 147, 148, 149, 302, 34 IPC, Police Station Jewar, District Gautam Buddha Nagar during pendency of the trial.

3. FIR of the present case was lodged against applicant and her family members including her husband and according to the FIR, the younger brother of the informant resided in Delhi and husband of the applicant has taken some money from him and in spite of repeated demand made by his brother, the husband of the applicant was not returning his money and on 23.07.2023 husband of the applicant called the brother of the informant to give his money and on 24.07.2023 at about 4.00 AM in the morning applicant and her family members including her husband committed his murder.

4. It is further mentioned in the FIR that dead body of the brother of the informant was lying in front of the door of the applicant.

5. Learned counsel for the applicant submitted that admittedly informant of the case was not an eye witness and during investigation also no eye witness could come forward and therefore, it is a case, which is totally based on circumstantial evidence.

6. He further submits that merely due to the reason that dead body of the deceased was found in front of the door of the applicant, she has been made accused in the present matter along with her other family members including her husband.

7. He further submits that actually deceased was history sheetor and he was also life convict and after committing some incident of loot in Delhi he arrived at village where it appears that somebody committed his murder but unfortunately he died in front of the door of the applicant, therefore, applicant and her family members made accused in the present matter.

8. He further submits that the fact that deceased committed *lootpat* just a day before is also evident from the statement of police constable of police station Ballabhgarh, District Faridabad, which has been annexed as Annexure-9. He further submits that even near the dead body of the deceased the looted motorcycle and from his body one country made pistol was also recovered.

9. He further submits that as deceased was history sheetor and from his dead body one country made pistol was also recovered, therefore, it is hard to believe that applicant and her family members would have been committed his murder by making assault through wooden stick, which was not a lethal weapon.

10. He further submits that applicant is a lady and she is not having any previous criminal history and in the present matter she is in jail since 25.07.2023.

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

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

13. From the record, it reflects that it is a case of circumstantial evidence and on the basis of fact that dead body of the deceased was lying in front of the door of the applicant, she (applicant) has been made accused in the present matter.

14. However, from the record it reflects that some dispute with regard to money was pending between deceased and husband of the applicant but except the recovery of the dead body in front of the door of the applicant there is no other evidence against the applicant on record. On the other hand, from the record it reflects that deceased was history sheetor and even from his possession one country made pistol was recovered along with alleged looted motorcycle, which alleged to have been looted by the deceased, therefore, I find force in the argument advanced by learned counsel for the applicant that it is hard to believe that applicant and her

family members would have committed the murder of such a criminal.

15. Further, applicant is a lady and she is not having any previous criminal history and in the present matter she is in jail since 25.07.2023.

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

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

17. Let the applicant - **Smt. Babita** 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 her 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.

18. 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.

19. 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 :- 14.12.2023

AK Pandey