

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53080 of 2023

Applicant :- Sukhvir

Opposite Party :- State of U.P.

Counsel for Applicant :- Shiv Shankar Sachan

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Rajeev Upadhyay, Advocate holding brief of Sri Shiv Shankar Sachan, learned counsel for the applicant and Sri Amar Nath Vishwakarma, 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. 0108 of 2023, under Sections 302, 201 IPC, Police Station Mirhachi, District Etah during pendency of the trial.
3. FIR of the present case was lodged against co-accused Tinku @ Hari Om and Satish Solanki and according to the FIR nominated accused persons on 17.05.2023 at about 8.00 PM in the night had taken the brother of the informant from his house and thereafter he did not return and next day in the morning his dead body was found near the temple in the bush.
4. Learned counsel for the applicant submitted that applicant was not named in the FIR and during investigation when the statement of the informant was recorded under Section 161 Cr.P.C. then on query made by the Investigating Officer he informed that near the dead body of his brother one golden wring was found, which according to him, belongs to the applicant.
5. He further submits that merely on the basis of such vague evidence applicant was made accused and when he was arrested then it is alleged that he confessed his guilt.
6. He further submits that however as per prosecution blood stained clothes were recovered from the possession of applicant but entire recovery was false and planted one and recovery was made from an open place which was accessible to everyone.

7. He further submits that however when during investigation statement of brothers of the applicant, namely Rajveer Singh and Manveer Singh were recorded then they stated that when applicant came to the house then on his shirt blood was found but both the brothers of the applicant were highly inimical to the applicant and this fact is even evident from their statements as both brothers of the applicant in their statements stated that applicant is unmarried and he used to consume liquor and he sold the ancestral land of his share.

8. He further submits that there is no cogent evidence on record against the applicant, which can show the involvement of the applicant in the present crime. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 23.05.2023 i.e. for last more than six months.

9. Per contra, learned AGA opposed the prayer for bail and submitted that on the pointing out of the applicant blood stained clothes were recovered and they were sent for chemical analysis and after analysis blood was found but he fairly conceded that as blood has become disintegrated therefore, its origin could not be ascertained. He further could not dispute the fact that applicant is not having any criminal history and in the present matter he is in jail since 23.05.2023 i.e. for last more than six months.

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

11. It is a case of circumstantial evidence and applicant was not named in the FIR but on the basis of a golden ring, which was found near the dead body, informant in his statement recorded under Section 161 Cr.P.C. disclosed his name and thereafter as per allegation he was arrested and he confessed his guilt and on his pointing out blood stained clothes were recovered near a pond.

12. It is further alleged by the prosecution that during investigation statement of brothers of the applicant were also recorded and they stated that applicant on the date of incident when came at home then blood marks were present on his shirt but from the FSL report, which was produced by learned AGA during the course of argument, it reflects that although blood on the shirt was found but due to disintegration its origin could not be ascertained.

13. From the recovery memo, which has been annexed along with instant bail application, it appears that recovery was made from an open place, which was accessible to all.

14. Further, from the statement of the brothers of the applicant, it reflects that they were not having good relationship with the applicant, therefore, argument advanced by learned counsel for the applicant cannot be completely brushed aside at this stage.

15. Further, applicant is not having any criminal history and in the present matter he is in jail since 23.05.2023 i.e. for last more than six months.

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 - **Sukhvir** 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 :- 12.12.2023

AK Pandey