

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52563 of 2023

Applicant :- Saddam Hussain

Opposite Party :- State of U.P.

Counsel for Applicant :- Amitesh Kumar Srivastava, Sunita Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Ms. Sunita Chauhan, learned counsel for the applicant, Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Saddam Hussain, seeking enlargement on bail during trial in connection with Case Crime No.430 of 2023, under Sections 363, 302, 201 IPC, registered at Police Station Saurikh, District Kannauj.
4. The FIR of the matter was lodged on 27.8.2023 by Smt. Sugharshri Pal against the applicant alleging therein that her daughter aged about 17 years studying in class 12th stated of going to the school on 25.8.2023 at 9 a.m. and went away. She did not return till evening. On search Renu Pal and Sheesh Pal of the village told her that they have seen her going on a motorcycle with Saddam near unchi pullia at Sakrava road. The dead-body of her daughter was found on 27.8.2023 at 8 a.m. on Agra-Lucknow Express Way at 151 km. The FIR be thus lodged.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that there is no eye-witness to the murder. The present case is a case of circumstantial evidence in which links in the chain of circumstances are missing. It is argued that prosecution is relying the theory of last-seen against the applicant on 25.8.2023. The dead-body of the deceased was recovered on 27.8.2023 and the postmortem was conducted at 4 p.m. whereas time since death was opined half to one day. The evidence which is being relied is the confessional statement of the applicant given to the police and the

recovery of a bag which is stated to be of the deceased having the articles of the deceased, the same is a planted and concocted piece of evidence. There is no credible evidence against the applicant. It is argued that applicant has no motive to commit the aforesaid offence. It has also been pointed out that the applicant is not having any criminal history as stated in para 25 of the affidavit. The applicant is in jail since 28.8.2023.

6. Per contra learned counsel for the State opposed the prayer for bail and argued that the applicant is named in the FIR and has given his confessional statement to the police of being with the deceased up to the morning of 27.8.2023 after which the dead-body of the deceased was found. There is recovery of articles of the deceased from the possession of the applicant. The applicant is thus involved in the present case, as such the prayer for bail be rejected.

7. After hearing the counsel for the parties and perusing the record, it is evident that the present case is a case of circumstantial in nature. There is no eye-witness to the murder. The story as being taken by the prosecution against the applicant of last-seen, his confessional statement to the police and recovery of articles of the deceased from the applicant is concerned, the story of last seen is a weak type of evidence. In so far as confessional statement to the police is concerned, the same is an inadmissible evidence. The recovery has been challenged as being a planted recovery.

8. Looking to 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, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant-Saddam Hussain, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

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.

10. 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 and send the applicant to prison.

11. The bail application is **allowed**.

(Smit Gopal, J.)

Order Date :- 8.12.2023

Gaurav Kuls