

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52867 of 2023

Applicant :- Ayub

Opposite Party :- State of U.P.

Counsel for Applicant :- Shiv Shankar Kaithal

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Suresh Dhar Dwivedi, Advocate holding brief of Sri Shiv Shankar Kaithal, learned counsel for the applicant and Sri Ajay Singh, learned AGA-I for the State and perused the records.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant **Ayub**, seeking enlargement on bail during trial in connection with Case Crime No. 174 of 2023, under Sections 302, 201, 34 IPC, registered at P.S. Govind Nagar, District Kanpur Nagar.

4. The FIR of the matter was lodged on 27.05.2023 under Sections 302, 201 IPC by Afsana @ Apsana against Salam alleging therein that on 25.04.2023 at about 06:00 pm her husband Mohd. Shakeel and she had some quarrel with regards to electricity bill. On 26.04.2023 she called her brother Salam and went to her maternal house. There were talks between her and her husband even then. On 27.04.2023 at about 04:00 pm she talked from the mobile phone of the neighbour to her husband who told her that he has left work and would do his work on his own. Her husband is not traceable since then. He has been searched but could not be traced. A report regarding his missing be lodged.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that on 29.04.2023 one Deepak Kumar gave an information to the police that one unknown dead body has been seen by him. The said information was registered in a GD after which the inquest to the same was conducted. On the same day, the postmortem examination of the same was also conducted as an unknown male person. The cause of death was opined as shock and hemorrhage

due to antemortem injuries which was although a single abrasion but there were extensive internal damages. It is argued that subsequently on suspicion, the police made the first informant Smt. Afsana @ Apsana also an accused in the matter. Later on, the statement of the father and mother of the deceased Mohd Shakeel, Smt. Afsana @ Apsana and her brothers Salam and Ayub who is the present applicant have been made as an accused in the present case. It is argued that the implication of the applicant in the present is without credible and cogent evidence. There is no direct or indirect evidence against the applicant in the present case. While placing para 24 and annexure 13 of the affidavit in support of the bail application it is argued that Smt. Afsana @ Apsana has been granted bail by a co-ordinate Bench of this Court vide order dated 18.10.2023 passed in Crl. Misc. Bail Application No. 44278 of 2023 (Smt Afsana @ Apsana Vs. State of U.P.). Further while placing para 28 of the affidavit it is argued that the applicant is involved in four other cases in which he is on bail by the concerned courts. The applicant is in jail since 29.05.2023.

6. Per contra, learned counsel for the State opposed the prayer for bail and argued that the applicant is the brother of Smt. Afsana @ Apsana the wife of the deceased. It is argued that the applicant was seen with the deceased after which the deceased went missing and then a body was recovered which was opined to be around 3-5 days old. The postmortem of the same was conducted on 02.05.2023. It is argued that the evidence of last seen is against the applicant, is clinching since soon thereafter the deceased went missing and the time since death corroborates with the same. It is further argued that the applicant has a criminal history of four cases in which one case under Section 302 IPC also and as such the involvement of the applicant in the present case is a repetition of a case of under Section 302 IPC. It is argued that there is no reason for false implication of the applicant and as such the prayer for bail of the applicant be rejected.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the present case is one in which the evidence is of last seen of the applicant with the deceased. The said time corroborates with the time since death conducting the postmortem by the doctor in the postmortem examination. The applicant when a juvenile was previously involved in another case under Section 302 IPC. There are three other cases in which he is involved. Looking to the entire facts and circumstances of the case, I do not find it a fit case for bail.

8. Considering the totality of the case in particular, nature of

evidence available on record, I am not inclined to release the applicant on bail.

9. The bail application is, accordingly, ***rejected***.

Order Date :- 8.12.2023

M. ARIF

(Samit Gopal, J.)