

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52712 of 2023

Applicant :- Shahrukh Alias Bakri

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Shekhar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Shri Chandra Shekhar Mishra, learned counsel for the applicant and Shri Ravi Kant Kushwaha, learned A.G.A. for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.83 of 2023, under Sections 302, 201, 120-B IPC, Police Station Kutubsher, District Saharanput, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 13.04.2023 against applicant and four others and according to the FIR, applicant and co-accused persons were indulged in trading of Smack and the son of the informant was in their influence and on 20.01.2023 when son of the informant was returning home from his Activa Scooty then from the way he missed somewhere and in this regard on 14.02.2023 informant lodged a missing report. It is further mentioned in the FIR that on the information given by the Police with regard to recovery of a skeleton when informant arrived in the forest then on the basis of clothes, he recognized that the skeleton was of his son, who was missed since 20.01.2023. It is further mentioned in the FIR that applicant and other nominated accused persons committed the murder of his son.

5. Learned counsel for the applicant submits that it is a case of circumstantial evidence and after four months on the basis of suspicion applicant has been made accused in the present matter alongwith other accused persons.

6. He further submits that even as per prosecution case, the alleged skeleton of the deceased was recovered on 28.03.2023 but in spite of that FIR of the present case was lodged on 13.04.2023 i.e. after two weeks.

7. He further submits that when on 14.02.2023 informant lodged a missing report of his son then at that time he did not raise any suspicion against the applicant and others and it appears that after four months he cooked up a false story and implicated the applicant in the present matter alongwith other accused persons.

8. He further submits that as per prosecution during investigation, Investigating Officer recorded statements of four persons, who stated that they have witnessed the applicant and other accused persons alongwith the deceased but on the basis of such last seen evidence, which has come after more than four months, it cannot be said that applicant involved in commission of the instant crime.

9. He further submits that except suspicion, confessional statement of the applicant and co-accused mentioned above and last seen evidence, there is no other evidence against the applicant on record.

10. He further submits that applicant is not having any criminal history and he is in jail in the present matter since 03.04.2023 i.e. for last more than six months.

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 both the parties and perused the record of the case.

13. Considering the fact that except suspicion and confessional statement of applicant and co-accused and last seen evidence, which was collected after four months, there is no other evidence against the applicant on record and he is not having any criminal history and he is in jail in the present matter since 03.04.2023 i.e. for last more than six months, in my view, applicant is entitled to be released on bail.

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

15. Let the applicant- **Shahrukh Alias Bakri**, 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.

16. 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.

17. 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 :- 8.12.2023

Zafar