Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53575 of 2023

Applicant :- Shanu @ Sonu
Opposite Party :- State of U.P.
Counsel for Applicant :- Ashish Kumar Gupta
Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary,J.

1. Supplementary affidavit filed today by the learned counsel for the applicant is taken on record.

2. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

3. The first information report of the present matter was lodged on 28.06.2021 by the informant against the applicant and four other persons alleging therein that when on 07.06.2021 her son went outside the house for some work the accused persons met him and served him some intoxicated substance and when he became ill they left him near the railway track where he died.

4. Learned counsel for the applicant submits that applicant has falsely been implicated in the present case. Learned counsel for the applicant further submits that F.I.R. of the present case has been lodged after 21 days with due deliberation and consultation wherein general allegation has been made against all the accused persons including the applicant and none of the accused has been assigned any specific allegation. According to post mortem examination report the deceased has sustained five injuries but his cause of death is uncertain, hence viscera was preserved. The statement of Amit Kumar as well as other witnesses who were also the eye witness of the inquest report have been recorded under Section 161 Cr.P.C. in which they have stated that the deceased was junkie and also all the named accused persons were the associates of the deceased. According to FSL report dated 30.09.2022 it transpires that aluminum phosphide and ethyl alcohol was found in the preserved material. The dead body of the deceased was found near the railway track. Learned counsel for the applicant further submits that other co-accused, Sunil @ Shulli, Vicky and Pankaj, against whom similar allegation has been made

have already been granted bail by different Benches of this Court vide orders dated 10.02.2023, 25.05.2023 and 02.202.2023 passed in Criminal Misc. Bail Application Nos. 57334 of 2022, 21055 of 2023 and 59003 of 2022, respectively, therefore, applicant is also entitled to be enlarged on bail on the ground of parity. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that criminal history of six cases of applicant has been explained in para-16 onwards in the supplementary affidavit filed today. The applicant is languishing in jail since 19.06.2023.

5. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence, but he does not dispute that similarly circumstanced co-accused have already been granted bail.

6. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all 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, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

7. Let applicant-Shanu @ Sonu, involved in Case Crime No. 703 of 2021, under Sections 147, 304 I.P.C., Police Station Highway, District Mathura, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(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.

8. 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 in accordance with law.

9. The bail application is allowed.

Order Date :- 14.12.2023
Mustaqeem.

Digitally signed by :-
MOHD MUSTAQEEM KHAN
High Court of Judicature at Allahabad