

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 936 of 2023

Applicant :- Mahfooj

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Ashutosh Mishra, Mahendra Pratap Singh, Shrayansh Verma, Uma Kant

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Uma Kant, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

2. This second bail application has been moved by the accused/applicant- **Mahfooj** for grant of bail, in Case Crime No. 395 of 2021, under Section 302 I.P.C., Police Station Mahmoodabad, District Sitapur, during trial, as his first bail application has been rejected by this Court, as the same has not been pressed.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of this case has been lodged by the sister of the deceased, namely, Anjali alleging that on 26.10.2021 at about 7:00 am. deceased had gone in a sugarcane field for easing out and when she did not return for a long time, she along with her cousin Maniram had gone in search of her and found that deceased was being strangled by the applicant with a 'scarf' (*dupatta*) and some part of the scarf has also been inserted into her mouth and after seeing them the applicant fled away from the scene along with two other accused persons and while the deceased was being taken to hospital, she succumbed to the injuries on her way to the hospital.

4. Highlighting the postmortem report of the deceased wherein only two injuries of the nature of abrasions have been found without any damage to the internal part of the organ and cause of death could not be ascertained and viscera has been preserved, it is submitted that the medical evidence in this case is in direct contrast with the ocular version of the incident. The forensic report pertaining to the viscera of the deceased has also been highlighted, a copy of which has been placed at Page No.65 of the paper book, in order to show that even not poison

or any noxious substance has been found in the viscera report. It is submitted with considerable force that even if the case of the prosecution is believed as it is, the death of the deceased could not be attributed to the injuries found on her person and by any stretch of imagination it cannot be a case under Section 302 of the I.P.C.

5. It is further submitted that the story, as cooked up by the informant and her cousin is so improbable which could not be believed on the touchstone of probability. Elaborating further, it is submitted that the prosecution has not assigned any motive to the applicant which may provide an opportunity to commit offence of the magnitude of murder.

6. While drawing the attention of this Court towards a marriage invitation card, a copy of which has been placed as Annexure No.1 to the rejoinder affidavit dated 13.09.2023, it is submitted that informant of the instant case has also solemnized marriage with the husband of the deceased on 03.07.2022, which throws a cloud of suspicion over the conduct of the informant and it appears that the real state of affairs have been concealed. The attention of this Court has also been drawn on the inquest report, a copy of which has been placed at Annexure No.6 to the bail application, wherein the dead body of the deceased is shown to be lying in the courtyard of the house of the informant and it is vehemently submitted that the story of seeing the applicant strangulating/smothering the deceased out has been carved out to shield the real culprit.

7. It is also submitted that till now only two prosecution witnesses have been testified while the applicant is languishing in jail in this case since 27.10.2021 and he is not having any criminal history. There is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

8. Reliance has also been placed by learned counsel for the applicant on the law laid down by the Hon'ble Supreme Court in '**Thaman Kumar Vs. State of Union Territory of Chandigarh**' reported in [(2003) 6 SCC 380.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the first bail application of the applicant was rejected after providing an opportunity of hearing to learned counsel for the applicant and since then nothing has changed.

10. Having heard learned counsel for the parties and having perused the record, it appears that the first bail application of

the applicant was rejected by this Court as after arguing at some length, learned counsel for the applicant has chosen not to press the same. It is evident that in the first information report as well as in the statement of the other prosecution witness, namely, Maniram, who have claimed themselves to be the eye witness of the incident, specific allegation has been levelled against the applicant of strangulating the deceased with the help of a scarf (*dupatta*) in an agricultural field. In the postmortem report of the deceased, though two minor injuries have been found on her neck but the cause of death could not be ascertained and even in viscera report nothing noxious or poisonous has been found. Prima facie the death of the deceased could not be related to the two minor injuries sustained by her or due to the consumption of any poisonous substance. The dead body of the deceased has also been found in the house of the informant at the time of inquest and interestingly the informant has solemnized marriage with the husband of the deceased. Various submissions have been made by learned counsel for the applicant in order to show that it is a case where there is absolutely no evidence against the applicant and medical evidence is in direct contrast with the oral evidence. Reliance in this regard has also been placed on the law laid down by the Hon'ble Supreme Court in '***Thaman Kumar Vs. State of Union Territory of Chandigarh***' reported in ***[(2003) 6 SCC 380]***. Applicant is languishing in jail in this case since 27.10.2021 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions. In the considered opinion of this Court, there is material change in the circumstances since the rejection of the first bail application of the applicant.

11. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. This second bail application is thus **allowed**.

12. Let the accused/applicant- **Mahfooj** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

13. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

14. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

15. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 18.11.2023

Praveen