

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1146 of 2023

Applicant :- Gulzar

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

Counsel for Applicant :- Istekhaf,Aditya Vikram Singh,Nadeem Murtaza,Praveen Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

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

2. This bail application has been moved by the accused/applicant- **Gulzar** for grant of bail, in Case Crime No.372 of 2018, under Sections 302, 394, 34, 411 I.P.C., Police Station Mandhata, District Pratapgarh, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case only on account of his criminal history as a blind case has been opened by the police after two years of lodging of the F.I.R.

4. Elaborating further, it is submitted that F.I.R. of this case has been lodged on 17.10.2018 against some unknown persons and the investigation appears to be going on and suddenly on 10.02.2020, the investigating officer appears to have made an entry in the case diary with regard to the involvement of the applicant and other accused persons probably on the basis that he got some discrete information pertaining to the involvement of the applicant and other accused persons, however, no source has been disclosed from whom the information was gathered as the same is not shown to have gathered from police informer. It appears that after 10.02.2020 additional statement of the informant Surendra Bahadur Singh was recorded, wherein an apprehension has been shown that the incident might have been committed by the applicant in association with other accused persons named in the statement. Thereafter the applicant and another accused person namely Junaid were taken on police custody remand on 24.12.2020 and after more than two years of the incident, motorcycle of the deceased is shown to have been

recovered on joint pointing of the applicant and co-accused Junaid from the house of co-accused Junaid and one pistol each on the pointing of the applicant and co-accused Junaid from the house of co-accused Junaid.

5. It is vehemently submitted on behalf of the applicant that the manner in which the case has been opened by the investigating officer could not be believed by any prudent person and the significant flaw, which has been left probably due to haste in which the case has been opened, is pertaining to identification of the applicant as no effort has been made by the investigating officer to get the applicant identified and it is not evident yet as to how the involvement of the applicant has been made in the instant case without establishing his identity.

6. It is further submitted that the applicant is shown to be having criminal history of 13 cases and the same has been explained in para no.37 of the bail application and barring three cases, the applicant has been granted bail in all these cases and the bail order/proof of grant of bail with regard to these cases have been placed on record from page no.54 onwards of the paper book and with regard to three cases, the bail is either pending or has not been moved by the applicant.

7. It is next submitted that applicant is in jail in this case since 23.12.2020 and it is apprehended that the trial may not be concluded in near future. Charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

8. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that keeping in view long criminal history of the applicant as well as evidence, which has been collected by the investigating officer with regard to the involvement of the applicant in the instant case and recovery of the motorcycle of the deceased as well as pistols from which the offence was committed, the applicant is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is evident that F.I.R. of this case has been lodged on 17.10.2018 by the informant with regard to the incident occurred on 16.10.2018 at 05:15pm. wherein the deceased was done to death and the motorcycle of the deceased on which he was riding has also been looted. The assailants in the F.I.R. are shown to have muffled their faces, that is why F.I.R. has been lodged against unknown persons. For two years, the investigating officer appears to have not got any clue and on

10.02.2020, a discrete information appears to have been provided to him with regard to the involvement of the applicant and other accused persons, thereafter the applicant and co-accused Junaid were taken on police custody remand and motorcycle of the deceased on the joint pointing of accused persons has been recovered from the house of the co-accused Junaid along with country-made pistols, which have been allegedly used in the incident. The defence of the applicant appears to be that the case has been opened in haste and apart from recovery there is no evidence against the applicant and it is also the defence that the identification of the applicant has not been established by any means. Though criminal history of 13 cases have been alleged against the applicant, however, in the considered view of this Court, criminal history of the applicant may only be relevant in the background of the evidence/material, which has been collected by the investigating officer in support of the accusation and solely on the basis of criminal history, the plea of bail of an accused may not be negated. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 23.12.2020. The presence of the applicant could be secured before the trial court by placing adequate conditions.

10. Having regard to the overall facts and circumstances of the case and 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 keeping in view the fact that the applicant is in jail in this case on 23.12.2020, 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. The bail application is thus **allowed**.

11. Let the accused/applicant- **Gulzar** involved in above-mentioned case, be released on bail on his furnishing a personal bond with **two heavy 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.

(iv). The applicant shall remain present before the trial court on

each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code;

(v). In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the 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 of the Indian Penal Code; and

(vi) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

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

14. 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 of this Court on the merits of the case.

Order Date :- 2.11.2023

Anupam S/-