

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1656 of 2023

Applicant :- Niyash @ Rustam @ Gulla

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

Counsel for Applicant :- Akash Kumar Yadav, Vishnu Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard 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- **Niyash @ Rustam @ Gulla** for grant of bail in Case Crime No.0366 of 2022, under Sections 302 and 201 IPC lodged at Police Station Kakori, District Lucknow, 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 and, he has not committed any offence, as claimed by the prosecution.

4. It is further submitted that FIR of this case has been lodged only on the basis of suspicion and apprehension and the informant is not an eye-witness of the alleged incident. It is further submitted the earlier to lodging of the FIR, a missing report is stated to have been given by the informant on 14.08.2022 pertaining to missing of the deceased since 11.08.2022 and no apprehension has been shown in that missing report against the applicant or any other co-accused persons. It is further submitted that after lodging of the FIR on 17.08.2022, without making any further investigation, three accused persons (including applicant) are shown to have been arrested by the police on 18.08.2022 and the motorcycle of the deceased is also shown to have been recovered from applicant and co-accused- Nafees is shown to have confessed his guilt by stating that as he has taken some amount from the deceased, who was having suspicion that he (Nafees) is having a bad-eye on his wife, so they decided to eliminate him (Dileep) and in furtherance of the same, the deceased was strangled with the use of scarf by co-accused - Nafees, while the role of catching-hold has been assigned to the applicant and co-accused, Mohd. Amir Ali while co-accused Akhilesh was sitting in the car.

5. Highlighting the above facts, it is vehemently submitted that no incriminating evidence has been recovered either from the possession or pointing of the applicant and name of the applicant is surfaced in the confessional statements of the co-accused persons and apart from such confessional statements of co-accused persons, there is no incriminating evidence against the applicant. It is further submitted that the case of the prosecution rests on circumstantial evidence and the circumstances, which are being placed against the applicant, are not of such nature on the basis of which inference may be drawn that the offence has been committed by the applicant.

6. It is further submitted that identically placed co-accused, namely, Mohd. Amir Ali has already been granted bail by this Court vide order dated 23.11.2023 passed in Criminal Misc. Bail Application No. 5836 of 2023. The applicant is languishing in jail in this case since 18.08.2022 and he is not having any previous criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

7. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed a heinous offence and, therefore, he is not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is reflected that deceased - Dileep got missing since morning of 11.08.2022 and when he could not be traced, a missing report was filed by the informant on 14.08.2022, however, on 17.08.2022 the body of the deceased was recovered which was identified by an engraved mark of words 'HD' by his family members. After a day of lodging of the FIR, three co-accused persons including applicant are shown to have been arrested and they confessed to have committed the crime. The motive which has been stated by them is that co-accused - Nafees had taken a big amount on loan from the deceased and also that he (Nafees) was having a bad-eye on the wife of the deceased. In this background, it is submitted that motive could only be attributed to co-accused, Nafees and confession made by accused persons in police custody may not be proved against applicant by virtue of bar contained under Section 26 of Indian Evidence Act and the manner in which the motorcycle of the deceased has been shown to have been recovered from their possession could also not be believed in absence of independent witnesses. The role of the applicant is distinguishable from the role of accused Nafees, more over, role of only catching hold has been assigned

to the applicant, even if the facts, as stated by accused persons in their confessional statements, are taken on their face. Identically placed co-accused, namely, Mohd. Amir Ali has already been granted bail by this Court. The applicant is languishing in jail in this case since 18.08.2022 without any previous criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

9. 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. The bail application is thus **allowed**.

10. Let the accused/applicant- **Niyash @ Rustam @ Gulla**, 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.

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

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

13. 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 :- 2.12.2023

Gurpreet Singh