

**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 2083 of 2023

**Applicant :-** Deepu

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

**Counsel for Applicant :-** Rajendra Singh Kushwaha

**Counsel for Opposite Party :-** G.A.,Ramesh Chandra Gupta

**Hon'ble Brij Raj Singh,J.**

1. Heard Sri Anas Ahmad holding brief of Sri Rajendra Singh Kushwaha, learned counsel for the applicant, Sri Ravish Chandra Mishra, learned A.G.A. for the State and perused record.
2. Sri R.C. Gupta, learned counsel for the O.P. No.2 is not present.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.719 of 2022 under Section 302, 201 and 376-D/34 IPC and Section 5 (g)/6 of POCSO Act, PS Kotwali Sadar, district Lakhimpur Kheri.
4. Learned counsel for the applicant has submitted that FIR was lodged by the father against unknown persons and he has mentioned in the FIR that his daughter had gone on the call of nature at 11.00 in the morning and her dead body was found in the sugarcane field of Kamleshwar. It has been submitted by the learned counsel for the applicant that the applicant is not named in the FIR. However, his name has come in the confessional statement of co-accused Ranjeet and Kumari Rajni who have stated before the police that the applicant and Arjun were keeping watch of sugarcane field and all four co-accused had gone inside the sugarcane field and it is confessed by co-accused Ranjeet and Rajni that they strangled the deceased.
5. Learned counsel for the applicant has submitted that the confessional statement has no value and only role assigned to the applicant that he was keeping watch from outside the sugarcane field. It has been submitted that there is no active act shown in the statement of co-accused and the applicant has been falsely implicated due to the reason that he is friend of co-accused Ranjeet. He has submitted that the case of the applicant

is distinguishable from the other co-accused because there is no allegation that he assaulted the deceased. He has further submitted that the applicant has no other criminal history and he is in jail since 29.6.2022.

6. Learned A.G.A. opposed the prayer for bail and submitted that there is eyewitness account available namely, Adesh Kumar Pandey who has also said that his farm is also near the sugarcane field where the incident took place and where the applicant and other co-accused had come on the place of occurrence.

7. Considering over all facts and circumstances of the case, the argument that there is no allegation against the applicant for assault on the deceased, the argument that as per statement of co-accused, the applicant was keeping watch of the sugarcane field where the murder has been committed by other co-accused, the argument that confessional statement has no evidentiary value under Section 25 of Evidence Act, and the argument that the case of the applicant is distinguishable from the other co-accused, it is a fit case for bail.

8. Let the applicant, Deepu be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(ii) 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.

(iii) 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. 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.

(iv) 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 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.

9. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

**Order Date :- 6.11.2023**

Rajneesh JR-PS)