

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2109 of 2023

Applicant :- Mohd. Sameer @ Samad

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

Counsel for Applicant :- Ankur Rai, Sushil Kumar Singh, Vaibhav Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Sushil Kumar Singh, 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- **Mohd. Sameer @ Samad** for grant of bail, in F.I.R./Case Crime No. 93 of 2021, under Section 302 and 201 I.P.C., Police Station Unchahar, District Raebareli, 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 the first bail application of the applicant has been rejected on 22.04.2022 and even thereafter the trial has not concluded till now and only 05 prosecution witnesses have been testified before the trial Court.
5. It is further submitted that it is a case where there is no evidence against the applicant except his confessional statement and the confessional statement of co-accused person and nothing is shown to have been recovered either from the possession or on the pointing of the applicant.
6. It is vehemently submitted that the story, as cooked up by the prosecution is highly improbable and could not be believed, as it is shown that applicant was arrested in some other case at Telangana and he confessed his guilt with regard to the instant case and he was taken on 'remand' by the police. However, nothing incriminating was recovered and without there being any material or evidence the charge sheet has been filed.

7. It is further submitted that statement of 05 prosecution witnesses have been recorded before the trial Court including two witnesses of fact and they have not deposed anything against the applicant.

8. It is next submitted that applicant is languishing in jail in this case since 04.08.2021. Criminal history of three cases has been explained in para no.19 of the bail application and since the trial has not concluded even after rejection of his first bail application, the applicant is entitled to be released on bail 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.

9. Learned on the other hand submits that applicant is a Gangster of Telanaga and is carrying criminal history of three cases pertaining to heinous offences and he along with the co-accused has caused the death of the deceased and, therefore, he is not entitled to be released on bail, moreso when the trial is at the concluding stage.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the case of the prosecution, as is emerging from the record appears to be that an unknown body was found within the territorial jurisdiction of Police Station Unchahar, District Raebareli, Uttar Pradesh on 26.02.2021 and information pertaining to the same was given by the informant, namely, Naseem Beg @ Chand. The postmortem on the body of the deceased was conducted and following injuries were found on the body of the deceased:-

"(i) Contusion laceration 1.5 cm x 1 cm bone deep at occipital;

(ii) Contusion laceration 2.3 cm x 1 cm bone deep at occipital 3 cm away from injury no.1;

(iii) Contusion laceration 1 cm x 1 cm left parietal region 6 cm above right pinna one opening underneath bone parietal bone found fractured, hematoma present; and

(iv) Abrasion 3 cm x 1 cm at left leg 6 cm below patella present."

The cause of death of the deceased was ascertained 'shock and hemorrhage' due to 'antemortem injuries'. The efforts were made to get the dead body of the deceased identified, however, the same could only be identified by the wife of the deceased Tehseen Khatima and his brother Tauseef Ahmad on 08.08.2021 by witnessing his photographs as the dead body had already

been cremated. Before identification of the dead body a phone call is shown to have been received by the investigating officer of the instant case from S.H.O. of Police Station Sanath Nagar, Telangana, Shri M. Mutthu Yadav and he informed the investigating officer that in connection with some other case the applicant has been arrested and he has confessed to have caused the death of the deceased in association with Talla Jagdish Ravi @ Bantoo Jagdish Talla. The deceased has been identified as Mohd. Layeeq, who was involved in many criminal cases and the applicant and co-accused along with many other gangsters were his associates. It is also surfaced that the deceased, who was also involved in many criminal cases was absconding as he was 'wanted' in connection with a murder case by Police Station Sanath Nagar, Telangana. The applicant and co-accused person were taken on 'remand' by the police and they appears to have confessed their guilt. It is confessed that a quarrel had taken place between them and deceased and when the applicant was driving 'Scorpio Vehicle', which was owned by the brother of the deceased, the applicant and co-accused hatched a conspiracy and in execution of the same the deceased was done to death, as he was seated by the side of the driver (applicant) and he was earlier from behind with a sharp stone by co-accused.

11. Five prosecution witnesses have been testified including the two witnesses of fact. Doctor, who conducted the postmortem, Inspector, who prepared the inquest report as well as the investigating officer. Thus, the trial appears to be at concluding stage.

12. Having gone through the whole facts and circumstances of the case, I do not find any material change in the circumstances since the rejection of the first bail application of the applicant on 22.04.2022. Applicant is also having criminal history of three cases. Thus, having regard to all the facts and circumstances of the case, this second bail application of the applicant is also **rejected**.

13. However, the applicant is languishing in jail in this case since 04.08.2021 and five prosecution witnesses have been testified, the trial Court is directed to make all out efforts to conclude the trial within six months from today, failing which, the applicant may renew his prayer for bail before this Court.

14. It is also clarified that in order to conclude the trial at the earliest within the time stipulated by this Court, if the case is required to be listed weekly, the trial Court shall do so.

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.

16. A copy of this order be immediately sent to the Trial Court through the Session Judge concerned for compliance.

Order Date :- 17.10.2023

Praveen