

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3207 of 2022

Applicant :- Adil Khan

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

Counsel for Applicant :- Rahul Roshan Dubey, Amit Kant Saxena, Madhulika Yadav, Mithlesh

Counsel for Opposite Party :- G.A., Vikas Chandra Dwivedi

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Ms. Madhulika Yadav, 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- **Adil Khan** for grant of bail, in Case Crime No. 195 of 2021, under Sections 364, 201 and 302 I.P.C., Police Station Dhammaur, District Sultanpur during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The 'missing report' with regard to the deceased was initially lodged by his father Shiv Sagar on 13.12.2020 alleging therein that on 26.11.2020 at about 2:00 pm. the deceased had gone from his house to Sultanpur but did not reach there and since then his mobile phone is coming switched off. An unidentified dead body of a young boy was found in the vicinity of Village Banakpur, Police Station Dhammaur, District Sultanpur and inquest of the same was prepared on 29.11.2020 and postmortem on that body, which was unidentified, was performed on 03.12.2020 at District Hospital Sultanpur, wherein a 'ligature mark' was found around the neck of the deceased and the cause of death has been ascertained as 'cardio respiratory arrest' due to 'strangulation'. Later on the dead body was identified as of the deceased.

4. It is also submitted that in the 'missing report' lodged by the father of the deceased on 13.12.2020, there is no whisper pertaining to the fact that the deceased was called by the wife of the applicant by making a phone call and this theory has been developed afterwards when the second application was moved.

5. It is vehemently submitted that even if the fact of making

phone call or having relations with the wife of the applicant of the deceased is admitted, the same may not be deemed to be the conclusive circumstances from which the inference may be drawn that applicant is the author of the crime.

6. It is next submitted that apart from the confessional statement of the applicant obtained while he was in the custody of the police and the C.D.R. details, there is nothing on record, which may connect the applicant with the crime. Elaborating further, it is submitted that the case of the prosecution rests on circumstantial evidence and the circumstances which are being alleged against the applicant are not of conclusive nature and there is gap and the same are not forming chain and, therefore, the cumulative effect of these circumstances may never be that the offence has been committed by the applicant.

7. It is further submitted that applicant is languishing in jail in this case since 19.05.2021 and he is not having any criminal history. The trial has not proceeded to any extent yet and there is no hope that the same is going to conclude in near future and the applicant undertakes that he will remain present before the trial Court for expeditious disposal of the case 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.

8. It is also submitted that the co-accused Preeti Maurya has been granted bail by a co-ordinate Bench of this Court, vide order dated 21.03.2022 passed in Criminal Misc. Bail Application No. 66 of 2022.

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

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the co-accused Preeti Maurya has been granted bail by a co-ordinate Bench of this Court. The evidence, which has been placed against the applicant by the prosecution is to the tune that the applicant was having illicit relations with the wife of the deceased and in this regard the C.D.R. details and 'whatsapp chat' has been placed and apart from this, the confessional statement of the applicant obtained while he was in the custody of the police is placed as evidence against the applicant. The defence of the applicant is to the tune that to establish the guilt of the applicant on the basis of circumstantial evidence, the circumstances must be of a conclusive nature and they must form a chain and the chain must be so strong not to leave any doubt with regard to the

innocence of the applicant and the only inference, which may be drawn by the cumulative effect of these circumstances would be to the tune that it is only and only the applicant who has committed the offence, which is not a case in this case having regard to the spaces, which have been left in the circumstances alleged by the prosecution. Applicant is languishing in jail in this case since 19.05.2021 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

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

12. Let the accused/applicant- **Adil Khan** 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 :- 1.11.2023

Praveen