

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4215 of 2023

Applicant :- Nafees Haidar

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

Counsel for Applicant :- Akash Kumar Yadav, Adesh Kumar, Pratiti, Ravi Prakash Nigam, Vinay Singh, Vishnu Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard Sri Chandra Bhushan Pandey who has filed his power on behalf of the applicant, which is taken on record. Also heard Sri Akhilesh Kumar Srivastava, learned A.G.A. for the State and perused record.
2. Supplementary counter affidavit filed today by the learned AGA is taken on record.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.366 of 2022 under Section 302, 201 IPC, PS Kakori district Lucknow.
4. Learned counsel for the applicant has submitted that FIR has been lodged by the mother of deceased in which she has stated that her son was missing since 11.8.2022 and report of missing was lodged on 14.8.2022. She got information that a dead body of the son was found in the canal. Thereafter, she lodged report and she had expressed her doubt that applicant and co-accused Amir and Rustam could have committed murder of her son.
5. Learned counsel for the applicant has submitted that post mortem report indicates that there is no injury found on the person of deceased and the confessional statement of all the three co-accused has been recorded by the police and in their confessional statement, they have stated that they committed murder of deceased. Learned counsel for the applicant has submitted that confessional statement has no evidential value under Section 25 of Evidence Act and has submitted that there is no other incriminating and direct evidence found against the applicant. Learned counsel for the applicant has further submitted that co-accused Mohd. Amit Ali has been granted bail by this Court in Crl. Misc. Bail Application No.5836 of 2023 on 23.11.2023 against whom the role of catching hold is assigned. He has submitted that whatever role has been assigned, it was

the confessional statement which has no evidential value and the case of the applicant is not distinguishable to that of the case of Mohd. Amir Ali because no one has seen the incident. He has submitted that though the main role of strangulation has been assigned to the applicant but co-accused Mohd. Amir Ali who has been granted bail, has been assigned the role of catching hold which is also the main role because the person who has caught hold the deceased, has got equal role in commission of crime.

6. He has further submitted that all the grounds as mentioned in the bail order of Mohd. Amir Ali are also available to the applicant and he is also entitled for bail. He has submitted that the applicant has no criminal history and he is in Jail since 18.8.2022.

7. Learned A.G.A. opposed the prayer for bail but could not dispute the aforesaid fact that co-accused Mohd. Amir Ali has been granted bail and there is no incriminating and direct evidence against the applicant.

8. Considering over all facts and circumstances of the case, the argument that there is no direct and incriminating evidence against the applicant, the argument that co-accused Mohd. Amir Ali has been granted bail by this Court in Crl. Misc. Bail Application No.5836 of 2023 and the case of the applicant is not distinguishable rather, the case of the applicant is also at par, the argument that confessional statement under Section 25 of Evidence Act has no evidential value, it is a fit case for bail.

9. Let the applicant, Nafees Haider 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.

10. 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 :- 12.12.2023
Rajneesh JR-PS)