

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4685 of 2023

Applicant :- Rajnesh

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

Counsel for Applicant :- Desh Raj Singh Yadav

Counsel for Opposite Party :- G.A.,Desh Raj Singh,Deshraj Singh

Hon'ble Brij Raj Singh,J.

1. Counter affidavit filed by learned A.G.A for the State is taken on record.

2. Heard Shri Desh Raj Singh Yadav, learned counsel for the applicant, Shri Deshraj Singh, learned counsel for complainant as well as learned A.G.A for the State and perused record.

3. The present bail application has been filed seeking release of the applicant **Rajnesh**, on bail in Case Crime No. 433 of 2022 under Sections 302 I.P.C, Police Station-Biswan, District Sitapur.

4. Learned counsel for the applicant submitted that the brother of the deceased lodged the First Information Report on 28.08.2022, wherein it is mentioned that his sister Shanti Devi had gone outside to ease herself but she did not return, thereafter, he and other family members made a search for her and as soon as he reached to the Chak Road near sugarcane field, he saw the applicant and two other accused running from the place of occurrence. He further has expressed his doubt that his sister might have been killed by the applicant and other two co-accused who had run away from the place of occurrence.

5. Learned counsel for applicant further submitted that the complainant is not the eye witness and he has improved his version in the supplementary statement recorded on 06.12.2022, wherein he has stated that as soon as he reached to the sugarcane field of Shri Ram, while searching for his sister, he saw the applicant, Suraj, Shubham and Abhishek Kumar running away from the place of occurrence and he also mentioned in the statement that co-accused Suraj was armed with *darati*. Learned counsel for applicant that in the First Information Report, the applicant has named three persons whereas in the supplementary statement, he has named four persons and has improved version of F.I.R because in the F.I.R he has mentioned that the applicant and other accused were not seen on the Chak road, but in the supplementary

statement, he has mentioned that he had seen the applicant and other three co-accused running away from sugarcane field. He further submitted that confessional statement of all the accused have been recorded but all of them have not stated anything before the police. He further stated that once the confessional statement does not indicate any offence, it cannot be construed that the same will go against the applicant.

6. Learned counsel for applicant further submitted that the statements of witnesses belonging to the same village, namely Pinki, Ruprani and Meera were recorded on 12.09.2020 and 20.09.2020 respectively, which is much belated from the date of incident. All of them have stated that they had seen the applicant and other co-accused running away from the sugarcane field. Learned counsel for applicant further submitted that it is a weak evidence and the same cannot be relied because none has seen the act of committing murder of the deceased and also the fact that the statements have been recorded at a much belated stage. All the independent witnesses belong to the same village but their names have not been mentioned in the F.I.R. He further stated that there is no clinching or direct evidence against the applicant regarding involvement of applicant in commission of crime. He further stated that there is no criminal history against the applicant and he is languishing in jail since 21.09.2022.

7. Learned counsel for complainant has opposed the prayer for grant of bail and has submitted that in the supplementary statement of witnesses namely Rooprani, Meera and Pinki, they have stated that they saw the applicants running away from the sugarcane field where the deceased was done to death.

8. Learned A.G.A for the State has opposed the prayer for grant of bail and has submitted that all the witnesses have supported the prosecution case and the evidences are sufficient to prove the case, therefore, bail is liable to be rejected.

9. Considering the facts and circumstances of the case, by perusing the record, considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that there is no direct or clinching evidence against the applicant to prove his involvement in commission of crime, the argument that confessional statement has no evidentiary value under Section 25 of the Indian Evidence Act, the argument that the statement of independent witnesses belonging to the same village was recorded at a belated stage and their names have not been mentioned in the F.I.R., the argument that the complainant is not the eye witnesses of the said crime, I find it to be a fit case for grant of bail.

10. Accordingly, the bail application is **allowed**.

11. Let the accused/applicant **Rajnesh** involved in above-mentioned case be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned subject to 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 her 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.

12. 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 :- 31.10.2023
DiVYa