

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4820 of 2023

Applicant :- Arpit Trivedi

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

Counsel for Applicant :- Sudhir Kumar Pandey, Pradeep Kumar Yadav, Raghvendra Singh, Rohit Kumar Singh

Counsel for Opposite Party :- G.A., Chandan Srivastava, Chandan Srivastava, Pranshu Agrawal, Pranshu Agarwal

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed on behalf of the complainant/informant is taken on record.
2. Supplementary affidavit filed by learned counsel for the applicant is also taken on record.
3. Heard Shri Rohit Kumar Singh, learned counsel for the accused-applicant, Shri Chandan Srivastava, learned counsel appearing for the complainant/informant as well as Shri Ran Vijai Singh, learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Arpit Trivedi** for grant of bail, in Case Crime No. 897 of 2020, under Section 302 and 201 I.P.C., Police Station P.G.I., District Lucknow, during trial.
5. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The 'missing report' pertaining to the deceased was lodged by the mother of the deceased on 18.11.2020 pertaining to the fact that on the relevant day the deceased was accompanying the applicant and thereafter got missing.
6. It is further submitted that on 21.11.2020 the first information report of this case was lodged naming the applicant and one Tushar Vimal alleging therein that on the basis of 'missing report' of the informant, an inquiry was conducted by the police and on the information provided by the applicant, the recovered clothes of the deceased and thereafter the body of the deceased was recovered from a 'pond' and after postmortem the same was

handed over to them. It is also stated that applicant and the deceased as well as Tushar Vimal were having enmity and the deceased was intimidated by the applicant and co-accused Tushar Vimal.

7. Highlighting the above facts, it is vehemently submitted that the case of the prosecution rests on the circumstantial evidence, as nobody has claimed to have seen the applicant committing the offence, however, the circumstances which are being alleged against the applicant are weak and are not of conclusive nature and is not forming a chain and, therefore, the conviction of the applicant before the trial Court would be a remote possibility.

8. It is further submitted that the only evidence, which is available against the applicant is his confessional statement and the alleged recovery of some clothes on the information allegedly provided by him to the police at the stage of inquiry conducted after lodging of the 'missing report' and, therefore, these circumstances are not of conclusive in nature. No recovery of any kind has been made from the possession or on the pointing of the applicant and only on the basis of presumption and assumptions and suspicion his involvement has been made in the instant case.

9. It is next submitted that applicant is languishing in jail in this case since 11.02.2023. The evidence of only one prosecution witness is being recorded before the trial Court and by any stretch of imagination the trial is not going to conclude in near future. The applicant is not having any criminal history. Charge sheet in this case has already been filed 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.

10. It is also submitted that during the course of investigation a 'compact disk' appears to have been provided by the informant to the investigating officer containing the verbal altercation between the applicant, Tushar Vimal and deceased and when the same was played in the police station, it was emerged that the applicant was in fact persuading the deceased and Tushar Vimal not to fight.

11. Learned A.G.A. on the other hand submits that the clothes of the deceased has been recovered on the information provided by the applicant to the family members of the deceased and there is sufficient evidence pertaining to the fact that it was the applicant, who had taken the deceased with him and, therefore, it was his duty to explain as to on what time and place they have parted and the explanation which has been given by the

applicant pertaining to his parting with the deceased has been found untruthful and, thus, in all probability the murder has been committed by the applicant, moreso, when he was having a motive for the same. Thus, having regard to all the evidence/material available against him, the applicant is not entitled to be released on bail.

12. Shri Chandan Srivastava, learned counsel appearing for the complainant/informant while drawing the attention of this Court towards the statement of various prosecution witnesses, submits that there is no doubt so far as the 'last seen' of the deceased with the applicant is concerned. The clothes of the deceased has also been recovered on the information provided by him. He has also used the telephone of the deceased even after the death of the deceased, as he was talking to one girl by using that phone and on the basis of the information provided by the applicant of time and place of his parting with the deceased, the C.C.T.V. footage of that area was searched and the explanation provided by the applicant was not found truthful and, therefore, in all probability the offence has been committed by the applicant and he is not entitled to be released on bail.

13. Having heard learned counsel for the parties and having perused the record, it is transpired that a 'missing report' was earlier filed by the mother of the deceased on 18.11.2020 pertaining to the fact that the deceased had gone with the applicant on 17.11.2020 and he was in touch with his family members till 9:30 pm. and thereafter he did not attend their phone calls and on being inquired, it was found that applicant Arpit had arrived at his home in that night in highly 'intoxicated state' and he informed that he had left the deceased in 'Sain Vihar Guest House Lane' and thereafter he had returned home. Thereafter the first information report of this case was lodged on 21.11.2020 at 22:15 hours (10:15 pm.) alleging that the deceased was taken by the applicant on his motorcycle on 17.11.2020 at 4:30 pm. and when he did not return, on 18.11.2020, a 'missing information' was lodged by the concerned police station and on an enquiry being conducted, on the missing report given by the applicant, the mobile phone and clothes of the deceased were recovered from the 'Defence Expo Water Dumping Ground' (Pond) and, thereafter, with the help of divers the dead body of the deceased was recovered from the pond and postmortem was conducted wherein the dead body of the deceased was found naked and a 'contusion' on the back of his head at 'occipital region' was also found and on 'opening echymosis' was also found present and the lungs and other vital organs of the deceased were also found congested with some mud particles therein and as per the opinion of the doctor the death of the deceased had occurred due to 'asphyxia', as a result

of 'antemortem drowning'.

14. It is also reflected from the record that the applicant was arrested and his confessional statement was recorded wherein he confessed to have gone with the deceased and they had gone to the place from where the clothes and mobile phone of the deceased was found and thereafter they returned together and he stated to left deceased at 'Giri Raj Cafe S.K.D. School'. The statement of Alka Bajpai was also recorded by the investigating officer wherein she has stated on 18.11.2020 after lodging of the 'missing report' the police had called the applicant and on the basis of information provided by him, the clothes and mobile phone of the deceased were recovered from the 'Defence Expo Water Dumping Ground' (Pond) and the dead body of the deceased was also recovered with the help of divers. The statement of Shreya Bajpai is also significant who had given the detail account of the events and she stated that at first the applicant had informed them that he had left the deceased in 'Sain Vihar Guest House Lane'. However, on searching the C.C.T.V. footage of the said locality, the information provided by the applicant was not found truthful and thereafter he (applicant) again informed that he had left the deceased at S.B.I. A.T.M. and after searching the C.C.T.V. footage of that area also the statement of the applicant with regard to leaving the deceased at that place was not found truthful. In this regard, the C.C.T.V. footage installed on the house of the deceased and on 'Spencer Mall' was also searched wherein the applicant and deceased could not be seen returning. It has come in the statement of informant that applicant has intimated to kill the deceased by making him naked about 4-5 days prior to the incident. Witness Aman Trivedi has stated that he was informed by the applicant that he (applicant) and deceased had taken beer in bulk near the pond and the deceased might have entered into the pond in a naked condition to get rid of drunkenness. The statement of Ms. Isha Reshu was also recorded wherein she stated that applicant had called him at 9:40 pm. on the fateful day and had told that deceased has got injured and he is being taken to hospital. The C.C.T.V. footage of the house of deceased will fortify that applicant had taken the deceased with him. The death of the deceased appears to be homicidal. Thus, what is transpired from the evidence, which has been collected by the investigating officer that the applicant had taken the deceased on his motorcycle on 17.11.2020 at about 4:30 pm. The clothes and mobile phone of the deceased has been recovered from the 'Defence Expo Water Dumping Ground', on the information provided by the applicant and the dead body of the deceased has also been recovered from the 'Pond', which is situated next to the ground from where the clothes and mobile phone of the

deceased was recovered and mobile phone of the deceased was used by the applicant subsequent to the death of the deceased also and the explanation of parting with the deceased at a particular place has been found untruthful, and the applicant was giving wrong information about the place of parting with the deceased.

15. The law with regard to the cases based on circumstantial evidence is well-settled. The circumstances being relied on must be of conclusive nature. They must form a chain so strong not to leave any room for any other person to come in between and commit the offence and when the case is based on theory of 'last seen', there must be close proximity in the time, death and place and when the initial facts have been proved by the prosecution, the accused by virtue of Section 106 of the Indian Evidence Act is obliged to explain the special facts in his knowledge i.e. in this case as to when and where he had parted from the deceased. The explanation given by the applicant stating about time and place of parting from deceased has not been found truthful and there are other circumstances also in this case including of motive which points prima facie towards the applicant alone and are not pointing anywhere elsewhere.

16. Thus, for the reasons given herein-above, I do not find any good ground to release the applicant on bail, at this stage.

17. Resultantly, the bail application moved on behalf of the applicant- **Arpit Trivedi** is **rejected**.

18. The Trial Court is directed to conclude the trial expeditiously without providing any soft adjournments to the parties.

Order Date :- 12.10.2023

Praveen