

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5087 of 2023

Applicant :- Sanjay Agrahari

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

Counsel for Applicant :- Madhulika Yadav, Mithlesh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. This is the second bail application moved on behalf of the applicant as his first bail application has been rejected by a Coordinate Bench of this Court on 08.08.2022, however, the hon'ble Judge, who has rejected his first bail application, has now been transferred to some other High Court.

2. Heard Ms. Madhulika Yadav, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicant- **Sanjay Agrahari** for grant of bail, in Case Crime No.170/2020, under Sections 420, 467, 468, 471, 409 and 306 I.P.C., Police Station- Baldirai, District- Sultanpur, during trial.

4. 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.

5. It is further submitted that allegations against the applicant are to the tune that the deceased was aged about 70 years. He had received some compensation from the State Government to the extent of Rs. 21,05,600/- with regard to the acquisition of his agricultural land and the said compensation amount was deposited in Baroda U.P. Gramin Bank, Branch- Dehli Bazar, Sultanpur. The applicant is an agent and facilitates the persons to deposit amount in the post office and he persuaded the deceased to deposit Rs. 13,50,000/- and has taken the said amount for the purpose of deposition in the post office, which he did not return and aggrieved by the same, the deceased has committed suicide.

6. It is vehemently submitted on behalf of the applicant that the

basic ingredient of Section 306 I.P.C is commission of suicide. However, in the instant case, there is no inquest report or post mortem report of the deceased available and therefore, it cannot be presumed that deceased had committed suicide.

7. Elaborating further, it is submitted that the deceased in fact had died a natural death and on account of some bad relations of the deceased with the applicant, the instant F.I.R. has been lodged. However, after lodging of the first information report and after rejection of the first bail application of the applicant, the statement of the two material witnesses of the prosecution, namely, P.W.-1/ Krishna Kumar Yadav (informant) and P.W.-2/ Ms. Subhadra Yadav has been recorded. While the P.W.-1/ Krishna Kumar Yadav was intact in his chief examination, however, in his cross examination, he stated in clear terms that he could not say as to how his father had died and P.W.-2/ Ms. Subhadra Devi (wife of the deceased) has not supported the allegations of the prosecution in her chief examination and was declared hostile. In her cross examination, she has stated that the deceased was aged about 75 years and was ailing from different age related ailments and the payment to the applicant was given as he had spent money in construction of the house of their daughter.

8. It is further submitted that when the star witnesses of the alleged crime have not supported the version of the prosecution, the conviction of the applicant would be a remote possibility. The applicant is in jail in this case since 17.05.2022 and he is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A., on the other hand, opposes the prayer of bail of the applicant on the ground that the first bail application of the applicant has already been rejected and there is no material change in the circumstances since the rejection of his first bail application, therefore, the applicant 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 first bail application of the applicant has been rejected on 08.08.2022. Thereafter, the statement of two prosecution witnesses, namely, Krishna Kumar Yadav (informant) and Ms. Subhadra Yadav (wife of the deceased) have been examined. The age of the deceased was stated to be 75 years at the date and time of the incident. P.W.-2/ Subhadra Yadav in her statement recorded before the trial court has stated that the applicant has spent some money pertaining to

the construction of the house of their daughter and the said money was paid to him by the deceased. The informant (P.W.-1) Krishna Kumar Yadav has stated in his cross examination that he could not say how the deceased had died and the F.I.R. was lodged by him on the persuasion given by some other persons. Admittedly, there is no inquest report or post mortem report of the deceased and it is in this background submitted with considerable force that a necessary ingredient of Section 306 I.P.C. i.e. death by suicide is missing in this case. The applicant is in jail in this case since 17.05.2022 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. Thus, having regard to fact that two prosecution witnesses have been testified after the rejection of the first bail application of the applicant, in the considered opinion of this Court appears to be a substantial change in the circumstances since the rejection of the first bail application of the applicant, more so, when they have not supported the version of the prosecution and 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- **Sanjay Agrahari** 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 of this Court on the merits of the case.

Order Date :- 21.12.2023

Gurpreet Singh