

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4993 of 2023

Applicant :- Anshu Shukla

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

Counsel for Applicant :- Rajiva Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Rajiva Dubey, learned counsel for the accused-applicant as well as Shri Avishesh Kumar Singh, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Anshu Shukla** on bail, who is involved in Case Crime No. 132 of 2022 under Sections 302, 201, 34 I.P.C, Police Station Pasgawan, District Lakhimpur Kheri.

3. Learned counsel for the applicant submitted that the incident took place on 02.04.2022 and the body of the deceased was recovered on 04.04.2022. The inquest of the deceased was conducted on 04.04.2022 and the post-mortem was conducted on 05.04.2022. He further submitted that the First Information Report was lodged by the complainant on 06.04.2022, and the applicant has not been named in the F.I.R, thereafter, the statement of one Rinku Awasthi has been recorded on 08.04.2022. In his statement, the name of the applicant has surfaced for the first time and it is stated by him that other co-accused namely Vivek, Lalit and Ankit Dixit @ Monu caught hold of the deceased and the applicant strangled the deceased. He further submitted that co-accused namely Vivek Shukla, Lalit @ Shyam Prakash and Ankit Dixit @ Monu have already been granted bail and the bail orders are annexed as R.A-5 and R.A-6 in the Rejoinder Affidavit filed by learned counsel for applicant.

4. Learned counsel for applicant further submitted that fact witnesses, P.W.-1 Chandrabhal, the complainant, P.W.-2 Shripal and P.W.-3 Anil Gupta have been declared hostile. A copy of the statements of all the witnesses has been filed along with the rejoinder affidavit. He further submitted that now P.W.-4, the doctor has been examined, this clearly goes to indicate that no further witnesses of fact are to be examined by the prosecution side. He further submitted that the main motive has been assigned to the real nephew of the deceased namely Ankit Dixit @ Monu Dixit and Lalit @ Shyam Prakash Dixit and both have already been granted bail. Admittedly, the deceased was not

married and he had agricultural land of 16-17 bigha and the real nephews were the direct beneficiary of the property of the deceased. Learned counsel for applicant further submitted that the statement of Rinku Awasthi, who claims to be the eye witness of the said incident, was recorded on 08.04.2022 and he did not inform the family members regarding the said incident nor the First Information Report was lodged at that time. After six days from the date of incident, the applicant was planted in the said case as per the statement of Rinku Awasthi and no motive has been assigned to the applicant in the present case.

5. Learned counsel for the applicant further stated that there is no previous criminal history of the applicant and he is languishing in jail since 16.04.2022.

6. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that in the statement of Rinku Awasthi, the name of the applicant has surfaced and the main role of strangulation has been assigned to him, therefore, his bail is liable to be rejected.

7. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that three fact witnesses including the complainant have become hostile, the argument that co-accused namely Ankit Dixit @ Monu Dixit and Lalit @ Shyam Prakash Dixit, who are the nephews of the deceased, who have been assigned main motive, have already been granted bail, the argument that the applicant is not even named in the First Information Report, the argument that after six days from the date of incident the name of the applicant has come into light, in the statement of Rinku Awasthi, the argument that it is a case of weak evidence, I find it to be a fit case for grant of bail.

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

9. Let the applicant **Anshu Shukla** 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 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.

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 :- 8.12.2023

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