

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5799 of 2023

Applicant :- Munna Singh

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

Counsel for Applicant :- Devendra Pratap, Shashank Shekhar Singh

Counsel for Opposite Party :- G.A., Purusottam Awasthi, Sumit Srivastava, Purusottam Awasthi

Hon'ble Brij Raj Singh, J.

1. Heard Sri Shashank Shekher Singh, learned counsel for the applicant, Sri Purusottam Awasthi, learned counsel for the complainant and Sri Rajesh Kumar Singh, learned A.G.A.-I for the State.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.1116 of 2017 under section 302/34 IPC, Police Station Kotwali, District Unnao.

3. It has been submitted by learned counsel for the applicant that FIR has been lodged by Krishna Kumar Tiwari, brother of the deceased, which indicates that there was an agreement to sell the agricultural property of Shri Ram with Manish Kumar, who is brother in law of the son of the complainant. FIR further indicates that land was looked after by the family of the complainant and there was scuffle between the parties in the night of 01.10.2017 at about 08.00 p.m. and the police was also informed. FIR also indicates that deceased was Godown Keeper and he was done to death and the complainant had named the applicant and other seven persons, making allegation that due to quarrel which took place for the aforesaid property, the applicant and other co-accused had killed his brother in the Godown which is more than 15 kilometers away from the house of the deceased. It has been submitted by learned counsel for the applicant that the matter was investigated and the statement of one Sri Vijay Kumar Saini Junior Engineer was recorded and he has stated that 8 Drum Single Phase A.B.C. and 11 K.V G. I. Pin were looted by someone and it appears that deceased was killed by persons, who looted the the aforesaid articles of the

Electricity Department which was kept in Godown. The case was investigated by Investigating Officer and charge-sheet was filed against Sushil Nath and Ashok Nath and aforesaid articles were recovered from their possession. The final report was filed in respect of applicant as he was not acted in the commission of offence.

4. The statement of Krishna Kumar Tiwari (P.W.-1), Dheeraj Kumar Tiwari (P.W.-2) and Rakesh Kumar Tiwari (P.W.-3) was recorded and they have also stated the similar fact which have been narrated in the FIR and they deposed before the court that since there was quarrel in the night of 01.10.2023 that is why the applicant and other co-accused have killed the deceased and there is motive assigned to the applicant. Learned counsel for the applicant has invited attention toward the statement of Vijay Kumar Saini (P.W.-4), who has stated that as soon as the FIR was lodged, the godown was sealed and later on, he came to know that 8 Drum Single Phase A.B.C. and 11 K.V G I. Pin were stolen and there is possibility that deceased was killed by the persons, who had stolen the aforesaid articles of the electricity department. Learned counsel for the applicant has submitted that after five years and six months, an application under section 319 Cr.P.C. was moved before the court and on the basis of statement of Krishna Kumar Tiwari (P.W.-1), Dheeraj Kumar Tiwari (P.W.-2) and Rakesh Kumar Tiwari (P.W.-3), the applicant was summoned. He challenged the summoning order before this Court by filing Application U/S 482 No.9034 of 2022 in which counter affidavit was called but no interim order was passed in his favour and he was arrested on 29.03.2023 and since then he is in jail.

5. Learned counsel for the applicant has submitted that final report was filed based on evidence on record and particularly stolen property has been recovered from Ashok Nath and Sushil Nath which is evident in the statement of Vijay Kumar Saini (P.W.-4). The trial court has disbelieved on the ground that Krishna Kumar Tiwari (P.W.-1), Dheeraj Kumar Tiwari (P.W.-2) and Rakesh Kumar Tiwari (P.W.-3) have supported the prosecution and they have deposed before the court that the applicant and other co-accused had killed his brother because of enmity and quarrel which took place in the night of 01.10.2017. Learned counsel for the applicant has submitted that no direct evidence has been found against the applicant and other co-accused, rather the

evidence has been found against Sushil Nath and Ashok Nath that is why the chargesheet was filed against them and recovery was made from their possession and the applicant has been exonerated while filing the charge-sheet.

6. On the other hand, Sri Purusottam Awasthi, learned counsel for the complainant has opposed the prayer for bail and he has submitted that story of theft is cooked up story otherwise the applicant and other co-accused have committed murder of the brother of the complainant because in the night of 01.10.2017 quarrel had taken place where the applicant and other co-accused were present and the deceased also opposed their action. He also relief upon para 19 and 29 of the judgment of Hon'ble Supreme Court in the case of **Anil Kumar Yadv and others Vs. State (NCT) of Delhi and others reported in AIR 2017 SC 5398**. He has submitted that the applicant is not entitled for bail because Krishna Kumar Tiwari (P.W.-1), Dheeraj Kumar Tiwari (P.W.-2) and Rakesh Kumar Tiwari (P.W.-3) have categorically stated that the applicant and other co-accused had committed murder of the deceased.

7. Sri Rajesh Kumar Singh, learned A.G.A. has advanced the similar argument which has been stated by learned counsel for the complainant.

8. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that final report was filed in favour of the applicant and the charge-sheet was filed against Sushil Nath and Ashok Nath on the ground that recovery of looted property was made from them and they had killed the deceased, the argument that applicant has been summoned after 5 years and six months under section 319 Cr.P.C. but no direct and clinching evidence has been found against the applicant except the fact that earlier there was quarrel between the applicant and other co-accused with the complainant and the deceased and the argument that Vijay Kumar Saini (P.W.-4) has not supported the prosecution case rather he has set up the case that godown was looted and out of scuffle deceased might have been killed and and the charge-sheet was filed against Sushil Nath and Ashok Nath on the ground that recovery of looted property was made from them, therefore, I am of the opinion that the applicant is entitled to be released on bail.

9. Let the applicant, namely, **Munna Singh**, 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 and in case he takes adjournment, the same shall be treated by the court below strictly and it may be the ground for cancellation of bail.

(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.

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 :- 16.10.2023

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