

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8642 of 2022

Applicant :- Kalam S/O Putti Alias Anvar Khan

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

Counsel for Applicant :- Ashish Raman Mishra, Aradhana Chaturvedi, Nripendra Mishra

Counsel for Opposite Party :- G.A., Bal Krishna Shukla

Hon'ble Brij Raj Singh, J.

1. Heard Shri Nripendra Mishra, learned counsel for the applicant, Akhilesh Kumar Srivastava, learned AGA for the State and Shri Bal Krishna Shukla, learned counsel for the complainant and perused the record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.91 of 2022, under Sections 302, 201 34 I.P.C., Police Station Rupaidiha, District Bahraich.

3. Learned counsel for the applicant submitted that First Information Report has been lodged by the brother of the deceased and as per FIR it appears that he is not an eye witness of the case. However, he has mentioned in the FIR that the applicant had illicit relations with the wife of the deceased. It has been submitted that after one month, the statement of Chapatti and Lal Babu have been recorded by the police and on the basis of statements of the aforesaid witnesses, the name of the applicant has come into light. Learned counsel has submitted that the prosecution case becomes weak because after one month, the statement of aforesaid witnesses have been recorded. He has further submitted that recovery is false for the reason that in the recovery memo, date of recovery is shown as 25.03.2022 and the applicant was arrested on the same day whereas in the statement of the complainant, it has come on record that the applicant was seen in the police station on 24.03.2022. He has submitted that in the aforesaid factual background, it appears that recovery is false and fabricated and PW1 has not supported the prosecution case. The applicant has no criminal history. The applicant is in jail since 25.03.2022.

4. On the other hand, learned counsel for the complainant has argued that bail of co-accused Shabnam has been rejected on 24.11.2022 in Criminal Misc. Bail Application No.7508 of 2022 and the court has mentioned the fact that there was illicit relations of the applicant with the co-accused and the deceased was done to death because he opposed the illicit relations with the applicant. Learned counsel for the complainant submitted that the statements of two witnesses Chapatti and Lal Babu have yet not been

recorded and they are the main witnesses and deceased was last seen along with the applicant and co-accused Shabnam. Learned AGA has also opposed the prayer for bail and reiterated the same version as advanced by learned counsel for the applicant.

5. Considering the over all facts and circumstances of the case, looking to the argument that two fact witnesses namely Chapatti and Lal Babu who are the eye witness of the case who had also seen the applicant along with co-accused Shabnam with the deceased and their statements are yet to be recorded; further argument that the two aforementioned witnesses have specifically stated that they had seen the applicant alongwith co-accused and deceased and thereafter deceased was done to death; the argument that due to illicit relations between the applicant and co-accused Shabnam (deceased was husband of co-accused Shabnam), I do not find it to be a fit case for bail.

6. Thus, having regard to the evidence available on record against the applicant and his complicity in the crime, I do not find any good ground to release the applicant on bail. Thus, the bail application moved on behalf of applicant **Kalam** is, hereby, rejected.

7. However, the learned trial Court is directed to expedite and conclude the trial of the aforesaid case within six months from the date a certified copy of this order is served.

Order Date :- 17.10.2023

Pks