

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7909 of 2023

Applicant :- Sunita Pandey

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

Counsel for Applicant :- Dharmendra Kumar Tiwari,Ravindra Kumar Dwivedi

Counsel for Opposite Party :- G.A.,Rohit Upadhyay,Sanjay Kumar Pandey

Hon'ble Brij Raj Singh,J.

This is the first bail application moved by the applicant who is an accused in case crime no.110/2021, (S.T. No.104 of 2022) under sections – 302 and 120 B IPC, registered at police station Bhati, District Ambedkar Nagar.

It has been submitted by the learned counsel for the applicant that the FIR has been lodged by the brother of the deceased in which he has stated that his brother deceased Ram Shankar Mishra went to his school on 31.7.2021 at 07:30 AM where he was teacher and while coming back at 02:30 PM he was killed by co-accused Ravi Pandey at the behest of Sunita Pandey who was involved in commission of crime. He has claimed that he was eyewitness of the case and as soon as alarm was raised the school teachers also reached to the place of occurrence and the accused ran away from the place. It has been submitted by the learned counsel for the applicant that PW-1 complainant has been cross examined before the learned trial court in which he has stated that the police did not record his statement and he denied the entire version of the prosecution case. He also denied the version of the FIR lodged by him in the cross examination. He has further deposed in his cross examination that a person from Govindapur came to his house and apprised him regarding the incident. Further he has deposed that he had given the name of the applicant and co-accused only for the reason that there was enmity between his brother and applicant.

Learned counsel for the applicant has further submitted that the school teacher PW-2 Shailendra who claimed to be eyewitness, has been declared hostile and PW-3 has also not supported the prosecution case in his cross examination.

Learned counsel for the applicant has further submitted that there is no clinching and direct evidence which indicates that the applicant conspired the plot and was involved in the commission of crime. Only on the basis of an enmity the applicant has been implicated.

Learned counsel for the applicant has further submitted that though the bail of the co-accused was rejected on 11.4.2023 but the prosecution witnesses have been examined after rejection of the bail application of the co accused Ravi Shankar alias Ravi Pandey and the statement of PW-1 started from 10.5.2023 and ended on

20.5.2023. These witnesses have not supported the prosecution case.

Learned counsel for the applicant has further submitted that the applicant is in jail for more than two years, i.e., since 02.8.2021 and she is lady and she may be extended the benefit of Section 437 CrPC.

Learned A.G.A. has opposed the bail and submitted that the bail application of co-accused Ravi Shankar Pandey bearing Bail Application No.12578 of 2021 has been rejected on 11.4.2023. He has further submitted that there is enmity between the applicant and deceased and she conspired plot and, therefore, she is guilty and bail application is liable to be rejected.

Learned counsel for the complainant has adopted the argument of the learned A.G.A.

Considering the overall argument and the fact that PW-1 complainant has not supported the prosecution case in his cross examination and has denied the version of the statement under Section 161 CrPC stated by him before the police and that PW-2 eyewitness Shailendra has been declared hostile and PW-3 Ram Bodh has also not supported the prosecution case in the cross examination and the fact that the applicant is a lady and is in jail for more than last two years, I am of the opinion that the applicant is entitled to be released on bail.

Let the applicant – Sunita Pandey be released on bail in the above case crime number on her furnishing a personal bond and two sureties each in the like amount to the satisfaction of the 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 the 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 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 CrPC 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 CrPC. 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 :- 20.12.2023

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