Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8152 of 2023

Applicant :- Jwala Prasad Bhaat @ Rajesh Kumar
Opposite Party :- State Of U.P. Thru. Addl. Secy. Home Civil Sectt, Lko.
Counsel for Applicant :- Rajeev Kumar Srivastava,Ganga Prasad
Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Ganga Prasad, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Jwala Prasad Bhaat @ Rajesh Kumar** for grant of bail, in Case Crime No.477 of 2018, under Sections 302, 201 I.P.C., Police Station Antu, District Pratapgarh, during trial.

3. 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.

4. It is further submitted that only on the basis of suspicion and apprehension, name of the applicant has surfaced in this case. Elaborating further, it is submitted that F.I.R. of this case has been lodged by the son of the deceased on 18.11.2018 at 23:20 hours stating therein that in the evening of 18.11.2018, deceased had gone with co-accused Ram Baran Harijan in order to take dinner at some function and at about 10:30pm., a phone call was received that dead body of the deceased is lying towards 400 meters of *Fatak*. It is also alleged that the deceased had gone on the motorcycle Splender Pro bearing registration no.UP72AJ5181 was also possessing a Lava mobile bearing mobile no.9451823994.

5. It is vehemently submitted on behalf of the applicant that the case of the prosecution rests purely on circumstantial evidence and on the confessional statement of the applicant obtained while he was in the custody of police. It is also submitted that apart from the statement of one witness namely Vijay Kumar

Verma, who has only shown an apprehension that in the headlight of the motorcycle, it was reflected that the applicant was standing at the place where the dead body of the deceased was found and the confessional statement of the applicant, which could not be proved against him by virtue of the bar contained under Section 26 of the Indian Evidence Act, there is no iota of evidence against the applicant.

6. It is further submitted that similarly placed co-accused persons of the alleged crime, namely, Gulab Singh, Ram Baran Harijan and Ashish Singh have been released on bail by the Coordinate Benches of this Court, vide orders dated 31.03.2022, 18.02.2021 and 30.07.2021 passed in Criminal Misc. Bail Application Nos.1781 of 2020,5174 of 20192360 of 2020, respectively.

7. It is next submitted that applicant is in jail in this case since 22.11.2018 and still one prosecution witness has been fully testified while statement of second witness is being recorded. Criminal history of two cases have been explained in para no.17 of the bail application 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.

8. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

9. Having heard learned counsel for the parties and having perused the record, it is evident that it is only on account of confessional statement of the applicant obtained while he was in the custody of police and in statement of one witness namely Vijay Kumar Verma, complicity of the applicant has surfaced in the crime while in the F.I.R., the applicant was not named. So far as the statement of Vijay Kumar Verma is concerned, who is stated to have died during trial and his statement could not be recorded before the trial court, he has a suspicion that on 18.11.2018 at relevant point of time at relevant place, he has seen the applicant, where the dead body of the deceased was found and apart from that there is recovery of a country-made pistol from the joint possession of the applicant as well as Ram Baran Harijan and they both have confessed to have committed the offence. Co-accused Ram Baran Harijan has already been granted bail by Coordinate Bench of this Court as well as two other co-accused persons namely Gulab Singh and Ashish Singh have also been granted bail by Coordinate Benches of

this Court. Nothing has been brought before this Court, which may suggest that the bail orders pertaining to these accused persons, have been challenged at any higher forum. Applicant is in jail in this case since 22.11.2018 and having regard to the pace with which the trial is going before the trial court, it is not expected to conclude the same in near future. The presence of the applicant could be secured before the trial court by placing adequate conditions.

10. Having regard to the overall facts and circumstances of the case 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**.

11 Let the accused/applicant- **Jwala Prasad Bhaat @ Rajesh Kumar** 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.

12. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

13. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

14 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 :- 31.10.2023
Anupam S/-

Digitally signed by :-
ANUPAM SINGH PATEL
High Court of Judicature at Allahabad,
Lucknow Bench