

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10319 of 2022

Applicant :- Ishwar Lal Rawat

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

Counsel for Applicant :- Vinod Kumar Pandey, Lalit Narayan Pandey

Counsel for Opposite Party :- G.A., Akash Deep Singh, Anand Kumar Yadav

Hon'ble Brij Raj Singh, J.

1. Supplementary affidavit filed by learned counsel for applicant is taken on record.
2. Heard Shri Vinod Kumar Pandey, learned counsel for the accused-applicant, Shri Akash Deep Singh, learned counsel for complainant as well as Shri Bipul Kumar Singh, Brief Holder for the State and perused the record.
3. This bail application has been filed seeking release of the accused/applicant **Ishwar Lal Rawat** on bail, who is involved in Case Crime No. 140 of 2022 under Sections 302 I.P.C, Police Station Kotwali Rudauli, District Ayodhya.
4. Learned counsel for the applicant submitted that the complainant is not the eye witness of the said incident. The First Information Report was lodged on 16.04.2022, thereafter, the statement of independent witnesses namely Sanjay Lodhi, Chingu and Ram Gopal Lodhi have been recorded on 18.04.2022. He has submitted that in the statements of fact witnesses, it has been mentioned that in the night, the applicant and other co-accused were going towards the place of incident, but according to the argument of counsel for applicant, the deceased was not seen with the co-accused, therefore, the last seen evidence is not sustainable. He further submitted that though, the motive has been assigned to the applicant to the extent that the applicant and other co-accused were convicted in the murder of father of deceased with a conviction of 10 years, but the same is not sufficient to implicate the applicant in the present case because there is no direct and clinching evidence available against the applicant. He further stated that the applicant has been assigned the role of catching hold of the deceased and he has no other previous criminal history and he has been languishing in jail since 24.04.2022.
5. On the other hand, counsel for complainant has submitted that strong motive has been assigned to the applicant and co-accused and the F.I.R. itself indicates that

in the murder of the father of deceased, the applicant and other co-accused are convicted for ten years and appeal is pending in the High Court. He further submitted that the prosecution case as set up in the F.I.R is corroborating with the statement of fact witnesses namely Sanjay Lodhi, Chingu and Ram Gopal Lodhi, who have supported the case to the extent that the applicant and other co-accused were seen going towards the place of occurrence and counsel for complainant further submits that it is a clinching evidence because the deceased was done to death at the same place, in the same locality and since there is strong motive with them, therefore, it can be inferred that the accused committed murder of the deceased. He has further drawn attention of the Court towards the provision of Section 437(1)(ii) Cr.P.C and has submitted that once the applicant has been convicted for ten years imprisonment coupled with the fact that he was involved in the murder of the father of deceased, therefore, he is not entitled for bail. He has further relied on the judgment of Hon'ble Supreme Court in the case of **Ram Pratap Yadav versus Mitra Sen Yadav and anr (arising out of SLP (Crl) No. 1266 of 2002)**.

6. Learned A.G.A has opposed the prayer of bail of the applicant and has adopted the argument of learned counsel for complainant.

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 strong motive has been assigned to the applicant coupled with provisions of Section 437 (1)(ii) Cr.P.C, the argument that the fact witnesses namely Sanjay Lodhi, Chingu and Ram Gopal Lodhi, have supported the prosecution case, I do not find it to be a fit case for grant of bail.

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

9. The trial court is directed to conclude the trial expeditiously, unaffected by the observations made by this Court, within a period of one year, without providing any unnecessary adjournment to either parties.

Order Date :- 17.10.2023
DiVYa