

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10947 of 2022

Applicant :- Arshad

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

Counsel for Applicant :- Ashish Kumar Shukla, Arjun Kumar Kaushal

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Arjun Kumar Kaushal, 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- **Arshad** for grant of bail, in Case Crime No. 392 of 2021, under Sections 302, 394, 411 I.P.C. and Section 4/25 Arms Act, Police Station Jagdishpur, District Amethi, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The F.I.R. of the incident has been lodged by the informant on 06.11.2021 at Police Station Jagdishpur, District Amethi, alleging that at about 3:00 am. he got information that her maternal grandmother, namely, Haleema Khatoon has been done to death by some unknown persons. During the course of investigation, the statement of various witnesses has been recorded, who have stated that some jewellery of the deceased and mobile phone is missing. After ten days of the incident another F.I.R has been lodged by one Vimla naming the applicant and other co-accused, namely, Ikrar, which was registered as Case Crime No. 0399 of 2021 at the same police station under Section 379 I.P.C., wherein she has stated that on 15.11.2021 she was sleeping with her husband at her home at about 2:30 am. in the night, the applicant and co-accused Ikrar entered into her house and had stolen one pair of 'payal', locket of 'mangalsutra' and a mobile phone of OPPO company and after seeing them she also raised an alarm

4. It is further submitted that the first information report of the instant case was lodged against unknown persons while the informant of the said case as well as the prosecution witnesses are resident of the same village and had the applicant been

involved in that case his name might have surfaced in the first information report itself.

5. It is also submitted that the applicant and co-accused are shown to have been arrested on 16.11.2021 and some jewellery, mobile phone and a '*chapad*' (*dragger*) is shown to have been recovered from them, which is also shown to have been identified by some witness of the instant case as well as the informant Vimla of Case Crime No. 0399 of 2021.

6. It is vehemently submitted that the manner in which the article allegedly recovered from the possession of the applicant and co-accused persons are shown to have been identified, could not be believed, as no proper 'Test Identification Parade' of either accused persons or the incriminating material recovered from them has been organized.

7. It is also submitted that the manner in which the accused persons are shown to have been arrested and recovery has been shown could also not be believed by any prudent person as to why the prosecution witnesses and the informant of the other case had arrived at the scene of the arrest and recovery without any information sent to them by the police.

8. It is further submitted that extra-judicial confession has also been alleged against the applicant and co-accused persons. However, Javwad before whom the extra-judicial confession is shown to have been made was not in a position to help the applicant in any way, moreover, he (Javwad) stated that when he put on his torch the accused persons had hidden themselves so when the applicant could not be seen there was no opportunity for them to have approached the witness Javwad and he appears to be a planted witness.

9. It is vehemently submitted that the evidence against the applicant is of circumstantial in nature. Applicant is languishing in jail in this case since 17.11.2021. Except one case which has been lodged by the informant, namely, Vimla, the applicant is not involved in any criminal case lodged against him and even if the confession allegedly obtained while the co-accused persons were in the custody of the police is believed, the role of assault has been assigned to the co-accused Ikrar. There is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

10. 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, therefore, he is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that applicant was not named in the F.I.R. After ten days of the lodging of the F.I.R. the applicant is shown to be involved in another theft and in this regard the informant, namely, Vimla had lodged another F.I.R. under Section 379 I.P.C. and on 16.11.2021 the applicant is shown to have been arrested along with co-accused Ikrar and they are further shown to have confessed their guilt to the tune that the deceased was done to death by co-accused Ikrar, while committing robbery. A '*chavad*' (*dragger*) is also shown to have been recovered from the possession of the accused persons, however, the same was not found blood stained. Some jewellery and mobile phone is shown to have been identified by the prosecution witnesses of the instant case as well as of the informant of the other case namely Vimla. Applicant is not having any criminal history. It appears to be an admitted fact that the informant and witnesses of the instant case are resident of the same village of which the applicant is also a native and it is in this background, it is vehemently submitted that had the applicant been involved in the instant case his name should have surfaced in the F.I.R. Applicant is languishing in jail in this case since 17.11.2021 and the presence of the applicant may be secured before the trial court by placing adequate conditions.

12. 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**.

13. Let the accused/applicant- **Arshad** 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.

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

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

16. 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 on the merits of the case.

Order Date :- 12.10.2023

Praveen