

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10041 of 2023

Applicant :- Chinta Ram

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

Counsel for Applicant :- Raj Kumar Mishra, Vinay Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Supplementary counter affidavit, filed in Court today by Sri G. D. Bhatt, learned A.G.A.-I for the State, is taken on record.
2. Heard Sri Raj Kumar Mishra, learned counsel for the applicant and Sri G. D. Bhatt, learned A.G.A.-I for the State and perused the record.
3. This bail application has been filed seeking release of accused/applicant- Chinta Ram on bail, in Case Crime No.Case Crime No.153 of 2023, Under Sections 302/34,120B I.P.C., registered at Police Station- Nanpara, District- Bahraich, in which the first bail application bearing No.913/12A of 2023, C.N.R.No. UPBH010022922023, JO code No.UP1882 has been rejected by learned Sessions Judge, Bahraich vide order dated 10.05.2023.
4. It has been submitted by learned counsel for the applicant that the F.I.R. was lodged by the father of the deceased wherein he has mentioned that he had gone to attend a function of relative and he was informed that the dead body of his son was lying in the field. Thereafter, he came back and went to the field where he saw that his son was assaulted with some sharp weapon and was lying dead.
5. Learned counsel for the applicant has submitted that the applicant is the real uncle of the deceased and brother of the complainant. He has also submitted that the confessional statement of co-accused, Anup Verma, has been recorded and as per his statement, it appears that he was advised to sacrifice human being that is why the plan was hatched by the applicant alongwith him and the deceased was chosen for that purpose. He has

also submitted that the deceased is the real nephew of the applicant and cousin of co-accused- Anup Verma. It has been submitted that in the confessional statement of co-accused- Anup Verma, that the applicant was standing at the place of occurrence and the co-accused- Anup Verma caused injury by assaulting the deceased with *faavda* due to which deceased succumbed. It has also been submitted by learned counsel for the applicant that recovery of *faavda* has been made on the pointing out of co-accused- Anup Verma. He further submitted that the applicant has been falsely implicated in the present case because no prudent man can believe that applicant being the real uncle of the deceased will hatch plan to sacrifice his own nephew and will be involved in commission of crime without his personal motive.

6. Learned counsel for the applicant has further submitted that confessional statement has no evidentiary value under Section 25 of Indian Evidence Act, 1872. He has further submitted that no role of assault has been assigned to the applicant, rather, it is assigned to the co-accused- Anup Verma. He has also submitted that there is no direct and clinching evidence indicating that the applicant involved in commission of crime and no independent eye-witness has seen the occurrence, rather, it is a confessional statement of co-accused which is not admissible. He has also submitted that there is no criminal history of the applicant and he is in jail since 26.03.2023.

7. Learned A.G.A. has, however, opposed the prayer for grant of bail and has invited attention of the Court towards the statements of Kisun, Vishram, Anup, and Rambaran and has submitted that as per their statements, it appears the applicant was also involved in hatching conspiracy. He has also submitted that the confessional statement of the co-accused indicates that the applicant was standing at the place of occurrence, therefore, his involvement in commission of offence cannot be ruled out.

8. Considering the overall facts and circumstances of the case, perusing the record, considering the

nature of allegations, arguments advanced by the learned counsel for the parties, the argument that confessional statement has no evidentiary value under Section 25 of Indian Evidence Act, 1872, the argument that there is no direct and clinching evidence indicating that the applicant was involved in commission of crime and no independent eye-witness has seen the occurrence, the argument that only on the basis of confessional statement of co-accused, the applicant has also been made accused in the present matter, the argument that recovery of weapon has been made on the pointing out of co-accused- Anup Verma, and case of applicant is distinguishable. I find it to be a fit case for grant of bail.

9. Accordingly, the bail application is **allowed**.

10. Let the applicant- **Chinta Ram** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of 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 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 her 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 Cr.P.C. 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 Cr.P.C. 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.

11. 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 :- 1.11.2023

Manoj K.