

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10182 of 2023

Applicant :- Roshni

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

Counsel for Applicant :- Bharat Kumar Dixit

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Rejoinder affidavit filed on behalf of the applicant is taken on record.

2. Heard Shri Bharat Kumar Dixit, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicant- **Roshni** for grant of bail, in Case Crime No.54 of 2023, under Sections 302, 201, 34 I.P.C., Police Station Maharajganj, District Raebareli, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and she has not committed any offence as claimed by the prosecution.

5. It is further submitted that as per F.I.R. the deceased is shown to have left his home on 08.02.2023 and he did not return thereafter and on 14.02.2023 a missing report was lodged by his brother-in-law (bahnoi) and thereafter on 21.02.2023, his dead body was found from the bank of the Sharda Canal and apprehension has been shown by the informant in the F.I.R. that the deceased was having illicit relationship with the sister of the applicant and her father as well as other family members including applicant have committed murder of the deceased and had thrown his dead body in the Sharda Canal. Postmortem report of the deceased would reveal that the body of the deceased was found decomposed at the time of postmortem and cause of death could not be ascertained and viscera was preserved.

6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that only on the basis of apprehension

and suspicion, F.I.R. has been lodged and the only evidence, which is available against the applicant, is the confessional statement of herself as well as of other family members including her father namely Chhedu. Elaborating further, it is submitted that confessional statement of the applicant recorded while she was in police custody, may not be proved against her by virtue of the bar contained under Section 26 of the Indian Evidence Act and even if confessional statements of the applicant and other co-accused persons are taken on its face, the role of administering poison or noxious substance has been assigned to the father of the applicant.

7. It is further submitted that the applicant was neither having any motive nor any incriminating article or substance has been recovered from her possession or on her pointing and simply on the basis of confessional statement of other accused persons, her name has surfaced in the commission of crime.

8. It is next submitted that applicant is a lady and is in jail in this case since 22.02.2023 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.

9. 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, she is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

10. Having heard learned counsel for the parties and having perused the record, it is evident that after about 12 days of his disappearance, dead body of the deceased was found from the bank of Sharda Canal. Body was decomposed and cause of death could not be ascertained, however, viscera was preserved. It is informed during the course of deliberations that viscera has been sent for forensic examination, however, viscera report is still awaited. The only evidence, which appears to be available against the applicant, is her confessional statement while she was in the custody of police as well as of confessional statement of other accused persons and apart from that there is no other evidence or material, which may connect the applicant with the crime. In the confessional statement of one of the accused persons namely Chhedu, it is admitted that noxious substance or poison was administered to the deceased by mixing it in liquor by him (Chhedu). Applicant is in jail in this case since 22.02.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. 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**.

12. Let the accused/applicant- **Roshni** involved in above-mentioned case, be released on bail on her 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.

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

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

15. 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/-