

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10503 of 2023

Applicant :- Durgesh Jaiswal

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

Counsel for Applicant :- Ramesh Kumar Mishra, Adhyatm Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Mr. Adhyatm Singh, 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- **Durgesh Jaiswal** for grant of bail in Case Crime No.0114 of 2022, under Section 302/34 IPC, lodged at Police Station Kaiserganj, District Bahraich, 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. It is further submitted that the informant of this case is not an eye-witness of the incident and the contents of the FIR have been narrated only on account of suspicion and apprehension. It is also submitted that the statements of two children of the applicant have also been recorded with a delay of two months and having regard to their ages there is every possibility that they have been tutored. It is also submitted that apart from confessional statement of the applicant and co-accused persons, there is no evidence, which may connect the applicant with the crime. Identically placed co-accused, namely, Mangaali (mother of the applicant/mother-in-law of the deceased) has been granted bail by the coordinate Bench of this Court vide order dated 20.03.2023 passed in Criminal Misc. Bail Application No.7704 of 2022 and, thus, on the principles of parity, the facility of bail may also be extended to the applicant, more so, he is not having any criminal antecedents to his credit. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 10.02.2023 and the presence of the applicant could be secured before the trial court by placing adequate conditions.

4. On the other hand, learned A.G.A opposes the bail plea of the

applicant on the ground that the applicant is having criminal history of one case which is with regard to absconding of the applicant in the instant case, moreover, the body of the deceased has been recovered from the house of the applicant and he has not explained the circumstances under which the deceased had died and having regard to the injuries shown in the postmortem report as well as the statements of two children, the complicity of the applicant in the crime is evident. It is also submitted that the applicant cannot be given the benefit of bail order of co-accused, Mangaali as she has been granted bail on account of the fact that she is having 60% disability, is a woman and the role of only exhortation has been assigned to her in the statements of the children of the applicant. Thus, the role of the applicant is not at par with the co-accused, Mangaali who has been granted bail by the coordinate Bench of this Court.

5. Having heard learned counsel for the parties and having perused the record, it is evident that the deceased was the wife of the applicant. Body of the deceased has been found in the house of the applicant. The postmortem report of the deceased would reveal that apart from sustaining four antemortem injuries of the nature of contusions, the deceased had also sustained various postmortem injuries of the nature of ligature mark which suggest that after committing the murder of the deceased, she was also strangled. The statements of the two children of the applicant/deceased were recorded with little amount of delay, however, the same appears to be not significant as they in categorical terms have assigned the role of assault to the applicant. At this juncture, the principle, enshrined under Section 106 of the Indian Evidence Act, is required to be recalled where a burden has been placed on the person who is in possession of special facts to prove those facts. Since the body of the deceased has been found in the house of the applicant and he was not found at his house and no plausible explanation has been given with regard to injuries sustained by the deceased, in the considered opinion of this Court, the brutality which has been committed with the body of the deceased would be an additional factor to draw an adverse inference against the applicant so far as the facility for bail is concerned.

6. In result, the bail application of the applicant is hereby **rejected**. It is to be emphasized that there is no parity of the applicant with the co-accused, Mangaali, who has been granted bail by the coordinate Bench only on account of the fact that she is having a different role and is suffering from 60% disability. However, the trial Court is directed to expedite the trial and conclude the same within one year from today.

7. Let a copy of this order be transmitted to the trial Court through the Sessions Judge concerned for compliance.

[Mohd. Faiz Alam Khan,J.]

Order Date :- 8.11.2023

MVS/-