

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10802 of 2023

Applicant :- Jitendra Kumar

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

Counsel for Applicant :- Smriti

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 Ms. Smriti, 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- **Jitendra Kumar** for grant of bail, in Case Crime No. 163/2023, under Sections 302, 201 IPC, Police Gauriganj, District Amethi, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The applicant was the informant of the instant case as his father was done to death by some unknown persons, however, instead of investigating the case in right perspective the Investigating Officer has chosen to file charge sheet only on the basis of an apprehension.
5. Elaborating further, it is submitted that the Investigating Officer in connivance with step brother of the applicant, namely Rohit has carved out a new theory that the deceased was inclined towards Rohit and wanted to bequeath his property in favour of him and his wife and on this score in furtherance of conspiracy hatched by the brother of the applicant, namely, Dharmendra the deceased had been done to death with the help of another accused Raju.
6. It is further submitted that apart from the confessional statement of the applicant and other co-accused persons there is no other clinching evidence available against the applicant and even if the confessional statement of the applicant and other co-accused persons are taken on its face, it will emerge that only the role of providing a motorcycle and a bed sheet has been

assigned to the instant applicant and the executors of the crime were stated to be the co-accused Dharmendra and Raju, therefore the role of instant applicant is distinguishable from the role of other accused person of the crime.

7. It is further submitted that though knife is shown to have been recovered from the possession of the applicant but the main accused of the crime, namely, Dharmendra at the time of his arrest in so many words had stated that after commission of crime knife was handed over to the applicant and they (Dharmendra and Raju) had gone to Varanasi, thus the knife which is shown to have been recovered from the applicant may not be of any consequence so far as the applicant is concerned.

8. It is next submitted that the case of the prosecution is based on circumstantial evidence as no witness has claimed to have seen the occurrence. The applicant is in jail in this case since 14.5.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been filed and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

9. Learned A.G.A. on the other hand submits that the applicant is accused of committing an heinous offence, moreover the weapon of assault has been recovered from his possession.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the FIR of this case has been lodged by none other than the applicant himself. It is also surfaced that the deceased had solemnized three marriages and the applicant and his brother Dharmendra and one Rohit and some other persons who were not connected with the crime committed in this case were the children of other two wives of the deceased. The motive which has been attributed to the instant applicant and co-accused Dharmendra for commission of the crime is to the tune that the deceased was inclined towards step brother of the applicant, namely, Rohit and his wife and wanted to bequeath his property in favour of them.

11. It is vehemently submitted that apart from Virendra Pasi and Raj Bahadur who have mentioned this fact as a stray narration, no other person has come forward to depose in favour of this fact, more so the other siblings of the applicant who were also having interest in the property has also not stated anything against the applicant.

12. It is also the defence of the applicant that the case of the prosecution rests on circumstantial evidence and even if the

confessional statement of the main accused- Dharmendra is taken on its face the role of only providing motorcycle and a bed sheet has been assigned to the instant applicant, while the role of commission of crime is owned by Dharmendra and one Raju. The applicant is in jail in this case since 14.5.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been filed. His presence may be secured before the trial court by placing adequate conditions. The role of the applicant in the alleged crime is distinguishable from the role of two other accused persons, namely, Dharmendra and Raju.

13. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

14. Let the applicant- **Jitendra Kumar** involved in the aforesaid case be released on bail on 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.

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

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

17. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 11.12.2023

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