

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11488 of 2023

Applicant :- Sarita

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

Counsel for Applicant :- Smriti

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Ms Smriti, 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 Sarita for grant of bail, in Case Crime No. 391 of 2021 under Section 302, 120-B IPC, Police Station Motigarpur, District Sultanpur, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and the applicant is the wife of the deceased. The story as cooked up by the Investigating Officer with the help of some person to the tune that applicant was having illicit relations with the co-accused Jai Prakash Gupta is highly concocted and could not be believed on the touchstone of probability.
4. It is further submitted that the version of the prosecution appears to be that the applicant had hatched a conspiracy with the help of another co-accused person, namely, Jai Prakash Gupta, with whom she was allegedly having illicit relationship to eliminate her husband and it is in furtherance of that conspiracy, the deceased (husband of the applicant) has been done to death. The mobile phone is also shown to have been recovered from the possession of co-accused, Jai Prakash Gupta. The statement of two witnesses, namely, Jai Prakash Gupta and Raj Bahadur Gupta appears to have been recorded by the Investigating Officer, who have stated that the applicant was having illicit relationship with Jai Prakash Gupta and she used to fight with her husband on this issue and thereafter on 06.12.2021 the confessional statement of the applicant is said to have been recorded wherein he stated to have confessed that she wanted to get rid of her husband and in furtherance of a conspiracy hatched by her and her lover (Jai Prakash Gupta), her husband has been done to death. It is vehemently submitted that the case of prosecution is based on fallacies, assumptions

and presumptions and apart from two untrustworthy witnesses who have only stated with regard to alleged illicit relationship of the applicant with co-accused, Jai Prakash Gupta, there is no witness who have stated so.

5. It is highlighted that even in the FIR, which has been lodged by the brother of the deceased, there is no mention of any illicit relationship of the applicant with co-accused Jai Prakash Gupta and this theory has been carved out subsequently on account of enmity. It is further submitted that no recovery of any kind has been affected either from the possession or on the pointing out of the applicant and apart from the suspicion there is nothing on record which may connect the applicant with the crime. It is also submitted that the co-accused Jai Prakash Gupta to whom the role of causing death of the deceased with the help of other co-accused, namely, Mehtab Alam @ Saddam has been levelled, have been released on bail vide order dated 19.07.2023 passed in Criminal Misc Bail Application No. 10162 of 2022 and order dated 02.06.2022 passed in Criminal Misc Bail Application No. 5656 of 2022.

6. It is further submitted that applicant is languishing in jail in this case since 06.12.2021, he is not having criminal history 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.

7. Learned A.G.A., on the other hand, opposes the prayer of bail of the applicant on the ground that the applicant has committed a heinous offence and she is the main conspirator of the crime, therefore, she is not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is reflected that first bail application of the applicant was rejected by the coordinate bench of this Court vide order dated 26.09.2022. After rejection of the first bail application of the applicant, co-accused Jai Prakash Gupta to whom also the role of causing death of the deceased has been attributed, has been granted bail by another bench of this Court. Co-accused Mehtab Alam @ Saddam to whom the role of actual execution of the crime was attributed, has also been granted by this Court. Admittedly the case of prosecution rests on circumstantial evidence as nobody has claimed to have seen the crime. The two witnesses whose statements have been recorded by the Investigating Officer have stated only about alleged illicit relationship of the applicant with co-accused Jai Prakash Gupta. Admittedly, the informant who is the younger brother of the deceased has not stated about any illicit relationship of the applicant either in the FIR or in his statement

recorded under Section 161 Cr.P.C. The applicant is not having any criminal history and he is in jail since 06.12.2021. Thus, for the reasons mentioned herein before and having regard to the period of detention already undergone by the applicant, in the considered opinion of the Court, would amount to substantial change in the circumstances since rejection of first bail application of the applicant and in result the applicant may be extended the facility of bail more so when he is not having criminal history.

9. Let the **accused/applicant- Sarita** 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.

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

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

12. 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 :- 27.10.2023

Renu/-