

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11354 of 2023

Applicant :- Prem Kumar

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

Counsel for Applicant :- Rajiva Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Rajiva Dubey, 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- **Prem Kumar** for grant of bail, in Case Crime No. 53 of 2023, under Sections 302, 201 IPC, Police Station Qasimpur, District Hardoi, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
4. It is further submitted that the applicant was not named in the FIR nor any apprehension was shown against him and when for a very long time, the mystery of murder of the deceased could not be solved, the investigating officer in a hurry has submitted the chargesheet against the applicant.
5. Elaborating further, it is submitted that after lodging of the FIR, the investigating officer appears to have got an information that about 10-12 years before the lodging of the FIR, one Surendra Kumar Rai had fled away with the deceased and thereafter his (Surendra Kumar Rai) statement was recorded wherein he stated to be not having any concern with the deceased as he had already solemnized marriage. Thereafter, the investigating officer stated to have got some clue with regard to the fact that the applicant is a truck driver and whenever he came to the village, he insisted the deceased to solemnize marriage with him as his wife was also no more and this offer of the applicant was not found favour and thereafter, the applicant is shown to have been arrested.

6. It is further submitted that the applicant is also shown to have made a confession while in the custody of the police pertaining to the commission of the offence and two buttons of his shirt which he was wearing at the time of the incident, is shown to have been recovered from the spot on the pointing of the applicant.

7. It is vehemently submitted on behalf of the applicant that by any stretch of imagination, it cannot be presumed that the two buttons which are shown to have been recovered from the spot, would remain so for a long period of time and evidently, the evidence of recovery of buttons has been planted by the police.

8. It is further submitted that even if the case of the prosecution is believed as it is, apart from recovery there is confessional statement of the applicant which is not admissible in the background of the bar contained under Section 26 of the Indian Evidence Act.

9. It is further submitted that the applicant is in jail in this case since 22.04.2023 and he is not having any criminal antecedents. Charge sheet in the matter 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.

10. Learned A.G.A., on the other hand submits that having manner on which the offence has been committed the applicant is not entitled for any relief.

11. Having heard learned counsel for the parties and having perused the record, it is evident that the case of the prosecution rests on circumstantial evidence as nobody has claimed to have seen the applicant committing the offence. The death of the deceased appears to have been caused by strangulation. The evidence which has been collected against the applicant is his own confessional statement as well as the recovery of two buttons of his shirt from the spot and it is in this background it is submitted that these evidences would not secure conviction before the trial court. The applicant is in jail in this case since 22.4.2023 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any adequate conditions.

12. 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**.

13. Let the applicant- **Prem 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.

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

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

16. 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 :- 22.11.2023

Shravan