

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11433 of 2023

Applicant :- Pradeep Kumar Alias Dayashanker

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

Counsel for Applicant :- Atul Verma, Akhilendra Pratap Singh, Vinod Kumar Yadav

Counsel for Opposite Party :- G.A., P.S. Bajpayee, Prem Shankar

Hon'ble Mohd. Faiz Alam Khan, J.

1. Short counter affidavit/objection filed on behalf of the complainant is taken on record.
2. Heard Shri Vinod Kumar Yadav, learned counsel for the accused-applicant, Shri P.S. Bajpayee, learned counsel appearing for the complainant 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- **Pradeep Kumar Alias Dayashanker** for grant of bail, in Case Crime No. 186 of 2023, under Sections 147, 149 and 302 I.P.C., Police Station Mohanlalganj, District Lucknow, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of this case was lodged by the father of the deceased, namely, Kalika and in that first information report no allegation was levelled against the applicant and he was also not named therein.
5. It is further submitted that after lodging of the first information report, the statement of the informant, namely, Kalika as well as another eye witness, namely, Jamuna was recorded, wherein also no allegation was levelled against the applicant and all accusation were attributed to the named accused persons, namely, Umashanker, Shatrohan, Ganga Vishun and Amit.
6. While drawing the attention of this Court towards the Parcha No. C.D.-2 and C.D.-4, which have been placed at Page No. 36 and 39 of the paper book, it is vehemently submitted that on

account of previous enmity the informant was attempting to falsely implicate the applicant and other accused, namely, Jamuna and in this regard a road was blocked while placing the body of the deceased and it is on this pressure applied by the informant and his associates the name of the applicant has been dragged into this case while he was not having any concern with the incident which had allegedly occurred.

7. It is also submitted that identically placed co-accused who was also not named in the first information report as well as in the statement of the witnesses recorded under section 161 Cr.P.C., namely, Jamuna has been granted bail by a co-ordinate Bench of this Court, vide order dated 28.10.2023 passed in Criminal Misc. Bail Application No. 11042 of 2023. The criminal history of one case is being alleged against the applicant, however, the same is with regard to the minor penal offence and the applicant has been granted bail in that case by competent criminal Court and a copy of the questionnaire in this regard obtained from the trial Court has been placed on record as Annexure No. RA-1 to the rejoinder affidavit of date 11.10.2023.

8. It is next submitted that applicant is languishing in jail in this case since 05.07.2023. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail he 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, therefore, he is not entitled to be released on bail.

10. Shri P.S. Bajpayee, learned counsel appearing for the complainant vehemently opposes the prayer of bail of the applicant on the ground that the investigating officer of this case was in connivance with the accused persons and that is why the investigation was not done in right direction.

11. It is also submitted that the informant of the case is an illiterate person and he was not aware as to the names of which accused has been written in the written application on the basis of which the F.I.R. has been lodged while since beginning he is alleging that the incident has been caused by the named accused persons of the F.I.R. as well as by the instant applicant and co-accused Jamuna.

12. It is further submitted that when the investigating was not done in right perspective by the investigating officer, an

application under Section 156(3) Cr.P.C. was moved by the informant enclosing therewith the affidavits of eye witness Kajal and when the report was obtained by the Court from the concerned police station, the investigating officer of the case was changed and charge sheet was submitted. It is next submitted that a 'slipper (*chappal*)' was also found on the spot which was of the instant applicant and that *chappal* has been identified as of the applicant by the prosecution witnesses. Therefore, the applicant is not entitled to be released on bail.

13. Perusal of the record would reveal that there are certain facts which are admitted to the parties. It is admitted that the applicant was not named in the F.I.R. lodged by the informant. It also appears to be an admitted factual matrix that in the statement of the informant as well as of eye witness Kajal, the name of the applicant and co-accused Jamuna was not mentioned and only the names of the accused persons against whom the F.I.R. was lodged, were taken. The statement of one prosecution witness, namely, Ram Milan is shown to have been recorded by the investigating officer who has taken the name of the instant applicant and co-accused Jamuna. In the first information report lodged on 14.04.2023, which in the opinion of this Court has been lodged with considerable promptness, the name of the applicant and co-accused Jamuna are missing. Similar is the situation of the statement of the informant as well as Kajal who appears to be the natural witnesses of the crime. Identically placed co-accused Jamuna has been granted bail by a co-ordinate Bench of this Court. Nothing has been brought before this Court which may suggest that the order whereby the bail has been granted to Jamuna has been challenged at any higher forum or has been cancelled by the same Court. Applicant is languishing in jail in this case since 05.07.2023. Criminal history of one case has been adequately explained. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

14. 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**.

15. Let the applicant- **Pradeep Kumar Alias Dayashanker** involved in above-mentioned case, be released on bail on his 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.

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

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

18. 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 :- 16.11.2023

Praveen