

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11497 of 2023

Applicant :- Deenanath

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

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

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Supplementary affidavit filed on behalf of the applicant, is taken on record.
2. Heard Sri Atul Verma, learned counsel for the applicant and Sri Ran Vijay Singh learned A.G.A. for the State.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No. 35 of 2023 under sections 302, 120B IPC, Police Station Baddupur District Barabanki.
4. It has been submitted by learned counsel for the applicant that maternal nephew of the deceased lodged a report and none is named in the FIR. It has been submitted by learned counsel for the applicant that deceased was unmarried person and was residing in the house of the applicant. He was done to death by some unknown person but the applicant has been falsely implicated in the case. Learned counsel for the applicant has submitted that incident took place on 21.02.2023 and extra judicial confession of Indra Pal Verma was recorded on 02.06.2023 in which he has stated that after incident two sons of the applicant, namely, Satya Prakash Verma @ Tinku and Rohit Verma had come to his house and they told him that police was searching them and they committed murder of the deceased at the behest of his father because he persuaded them to commit murder. Learned counsel for the applicant has submitted that this evidence has come after three months and he has submitted that the statement of Sohan Lal Rawat and Chet Ram Rawat was also recorded on 02.06.2023 and they have stated that they have some doubt that this murder might have been done by the applicant and his

sons. Learned counsel for the applicant has submitted that there is no motive to commit the murder because property is in the name of deceased and the mother of the complainant is real successor as per U.P. Ziminhari and Abolition Act because as soon as deceased died, mother of the complainant Savitra Devi moved an application for mutation of the property of the deceased and the same has been mutated in her name. Learned counsel for the applicant has filed Annexure no. SA-1 to the supplementary affidavit filed today, which indicates that the property was mutated in the name of the mother of the complainant. Learned counsel for the applicant has further submitted that the mother of the complainant had executed sale-deed of the property of the deceased as soon as she became legal successor and he has also annexed the Sale-deeds which is annexed as Annexure no. SA-2 and SA-3 to the supplementary affidavit filed today. It has been submitted by learned counsel for the applicant that complainant and his mother are beneficiary of the land in question and the applicant is not beneficiary, therefore, whatever allegation levelled against the applicant is totally false and fabricated. He also submitted that no direct or clinching evidence is found against the applicant. The applicant has no previous criminal history and there is no possibility of fleeing away from the judicial process or tempering with the witnesses and in case, the applicant is enlarged on bail, he shall not misuse the liberty of bail. The applicant is in jail since 07.06.2023.

5. On the other hand, learned A.G.A. has opposed the prayer for bail and has submitted that the deceased was residing in the house of the applicant, therefore, presumption goes against him and on the basis of extra judicial confession of Indra Pal Verma and other witness, case is established therefore, the bail application of the applicant is liable to be rejected.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that applicant is not named in the FIR and after three months in extra judicial confession, the name of the applicant came into light, the argument that there is no direct and clinching evidence found against the applicant and the argument that the applicant is not beneficiary of the land of the deceased rather the complainant and his mother are beneficiary, therefore, I am of the opinion that the applicant is entitled to be released on bail.

5. Let the applicant, namely, **Deenanath**, be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 23.11.2023

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