

Reserved on 21.11.2023

Delivered on 24.11.2023

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13065 of 2022

Applicant :- Mukesh Kuamr Kaushal

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

Counsel for Applicant :- Brij Mohan Sahai, Amit Gupta, Vinay Kumar Yadav, Yogendra Mishra

Counsel for Opposite Party :- G.A., Hemant Kumar Pandey, Prabhat Kumar Mishra

Hon'ble Brij Raj Singh, J.

1. Heard Shri Yogendra Mishra, learned counsel for the applicant, Shri Diwakar Singh, learned AGA for the State and perused the record. No one has appeared for learned counsel for the complainant.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.73 of 2022, under Sections 302, 201 I.P.C. Police Station Jamo, District Amethi.

3. Learned counsel for the applicant submitted that father of the deceased lodged FIR on 31.03.2022 mentioning that his son was taken by the applicant in his car on 29.03.2022 at 7:30 in the evening. At about 11-12 o'clock in the night, mobile phone of the deceased was switched off and after search, no information was received. Thereafter, on Electronic Media, the photograph of son of complainant was seen and he came to know that his body was found near a canal in village Reisi. After looking into the body, the applicant lodged FIR and expressed his opinion that his son was killed by the applicant. It has been further submitted by learned counsel for the applicant that father of the deceased is not an eye witness and the FIR was not lodged promptly. It has been submitted that no one has seen the incident and there is no direct evidence to show that applicant was involved in the commission of offence. The applicant has no other criminal history and is languishing in jail since 31.03.2022.

4. Learned counsel for the applicant further submitted that the deceased was killed and done to death by some other person and the applicant has been falsely implicated without any motive. He has further submitted that there is no chain of evidence which indicates that the deceased was present with the applicant at the time of commission of offence. He has submitted that though the applicant had gone along with him but he returned back on 29.03.2022 itself. He submitted that statement recorded under Section

161 Cr.P.C of the witnesses are not reliable for the reason that there is no ocular witness.

5. Learned AGA has opposed the prayer for bail and has submitted that FIR has been lodged in a very natural manner. The complainant, who is father of the deceased, had stated that on 29.03.2023 at 7:30 p.m. the applicant had taken the deceased in his car. and thereafter at 11-12 o'clock the mobile phone was coming switched off. The applicant is the last person with whom the deceased had gone therefore, he is responsible. The statement of complainant has been recorded under Section 161 Cr.P.C. and he has mentioned in detail that there was friendship between the applicant and deceased. He has reiterated the same facts as stated in the FIR and further mentioned that the complainant asked the applicant where his son was. On asking the applicant told him that they had consumed liquor and thereafter there was quarrel between them and he parted himself from the deceased.

6. Learned AGA has drawn attention of this Court towards the statement recorded under Section 161 Cr.P.C. of witness Praveen Kumar Singh, who has stated in his statement that on 29.03.2022, he had seen the applicant and deceased going in a car and he asked where they were going and applicant told him that they were going to enjoy outside. The statement of Praveen Kumar Singh further goes to indicate that at 9:30 he called Sandeep (deceased) as to why he has not returned back to his house and in intoxicated state he told that he was present with the applicant and was talking on some important issues. Thereafter, phone was disconnected. He called the applicant in morning and asked about the deceased, who told him that the deceased was heavily drunk and was given lift in a car and he had left him in the night.

7. The other witness Rahul Singh has assigned motive that when deceased was in jail, the applicant being friend did not helped him as such the deceased threatened him with dire consequences for which complaint was made to Police and to District Superintendent of Jail, by the applicant. He has submitted that their relations were not cordial due to the aforesaid reason, the applicant had killed him. Learned AGA submitted that the prosecution case is supported by the statement of witnesses, Rohit Singh, Rahul Singh, Praveen Kumar Singh and Amrendra Pratap Singh.

8. Learned AGA has also invited attention of this Court towards Annexure 7 i.e. Call Detail Report which indicates that there was conversation between the applicant and the deceased on 29.03.2022 at 15:40:16 for 11 secs; thereafter again at 18:01:19 for 11 secs and location of both mobile was found at Payagipur Chauraha, District Sultanpur and thereafter at 09:00 p.m. the location of deceased was found at Gauriganj and last call was recorded at 23:44:19

and thereafter the mobile phone was switched off. Learned AGA further submitted that after looking into the CDR details, it is clear that there was conversation between the deceased and the applicant and location was also found at the place of incident therefore, the applicant is involved in the commission of crime and bail of the applicant is liable to be rejected.

9. After hearing learned counsel for the parties, considering over all facts and circumstances of the case, argument that as per FIR lodged by father, applicant is the last person with whom the deceased had gone outside; argument that statement of the FIR is supported by statement of Praveen Kumar Singh and other witnesses, argument that CDR detail indicates that there was conversation between the applicant and the deceased, on the date of occurrence of crime and same location was found, I am of the opinion that it is not a fit case for bail.

10. Thus, having regard to the evidence available on record against the applicant and his complicity in the crime, I do not find any good ground to release the applicant on bail. Thus, the bail application moved on behalf of applicant Mukesh Kumar Kaushal is rejected.

11. However, the trial court is directed to proceed with the trial and make all efforts to conclude the same within ten months from today.

12. Observations made hereinabove by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

Order Date :- 24.11.2023

Pks