

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11936 of 2023

Applicant :- Ram Babu @ Ramu Kashyap

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

Counsel for Applicant :- Riyaz Ahmad, Hemant Kumar Pandey, Osama Syed

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, of Sri Ran Vijay Singh, learned A.G.A. for the State and perused record.
2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.488 of 2022 under Section 302 IPC, PS Malihabad, district Lucknow.
3. Learned counsel for the applicant has submitted that Bahnoi (brother-in-law) of deceased lodged report mentioning that the deceased was lying dead on the bed, therefore, without naming anyone, the FIR has been lodged by him. He has submitted that the said FIR was lodged on 4.11.2022 and after one month i.e., on 6.12.2022, the statement of Bhagwan Deen has been recorded under Section 161 CrPC who has stated that on the date of incident, he had seen the applicant going towards the house of the deceased. It has been submitted by the learned counsel for the applicant that the said statement is totally unreliable because after one month, he has simply stated that he had seen the applicant going towards the house of the applicant and he might have committed the crime. He has further submitted that statement under Section 161 CrPC of Mayank Nigam has also been recorded and he has mentioned that the deceased was drinker and many persons used to drink along with him and there was relation of the sister of deceased with the applicant. He has stated that the sister of deceased had gone for Balaji Darshan on the date of occurrence. Similar is the statements of Amit Sharma who is not eyewitness rather, he is maternal uncle of deceased and sister of deceased who had gone along with him for Balaji Darshan and returned on 4.11.2022. Learned counsel for the applicant has submitted that the witness

Amit Sharma is not eyewitness and whatever he has stated is not reliable.

4. Learned counsel for the applicant has further submitted that after looking into the statements and material collected by the Investigating Officer, it cannot be said that the applicant was involved in commission of crime because there is no clinching and direct evidence collected against the applicant. He has submitted that on the confessional statement, the applicant has been made accused but the confessional statement of the applicant is not admissible under Section 25 of Evidence Act. He has further submitted that the applicant has no criminal history and he is in Jail since 6.11.2022.

5. On the other hand, learned A.G.A. opposed the prayer for bail and ha submitted that after looking into the prosecution case, it appears that the applicant might have committed the crime and he is not entitled for bail.

6. Considering the over all facts and circumstances of the case, the argument that the applicant is not named in the FIR, the argument that no direct and clinching evidence is collected against the applicant, the argument that statement of witness Bhagwan Deen is not reliable, it is a fit case for bail.

7. Let the applicant, Ram Babu @ Ramu Kashyap 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.

8. 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

Rajneesh JR-PS)