

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11995 of 2023

Applicant :- Avadhesh Kumar

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

Counsel for Applicant :- Mrs.Suniti Sachan,Gangeshwar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Mrs. Suniti Sachan, learned counsel for the accused-applicant, as well as learned A.G.A. for the State and perused the record.

Rejoinder affidavit is taken on record.

2. This bail application has been moved by the accused/applicant - **Avadhesh Kumar** for grant of bail in Case Crime No.0205 of 2023, under Sections 302, 34 IPC lodged at Police Station Haiderabad, District Kheri, during trial.

3. Learned counsel for the accused-applicant, while pressing the bail application, submits that the applicant has been falsely implicated in this case and, he has not committed any offence, as claimed by the prosecution. While drawing attention of this Court towards the FIR, it is further submitted that the FIR has been lodged only on the basis of apprehension, on account of previous enmity and beyond that, there is no iota, material or evidence against the applicant. Elaborating further, it is submitted that at first on 14.05.2023 a missing information was given by the informant to the concerned police station with regard to missing of the deceased, alleging that on 13.05.2023 the deceased had gone at 8.00 a.m. but did not return thereafter and it was on 19.05.2023 the dead-body of the deceased was recovered and the inquest was also prepared, however, till then there was no whisper about the culpability of the applicant and other accused persons and the story has been crafted thereafter on account of instigation given by some villagers who were having inimical terms with the applicant.

4. Elaborating further, it is submitted that younger sister of the informant was married to the son of co-accused, Dal Chand and in this regard a criminal case was registered against co-accused, Dal Chand and his family members under the relevant provisions of the IPC, including Section 304-B IPC, and the implication of the applicant is only on account of the fact that he is the son-in-law (*Damad*) of co-accused, Dal Chand. It is vehemently submitted that the motive which has been assigned to the applicant and other accused persons is to the tune that the

applicant and other accused persons were pressurizing the deceased to persuade the informant of the aforesaid criminal case to take back or to make compromise and in this regard on the relevant day a phone call was made by the accused persons on the mobile phone of the deceased and after attending the call the deceased had left his home.

5. It is further vehemently submitted that in the counter affidavit filed by the State no call detail record has been enclosed which belies the foundation of the prosecution case. It is also submitted that if the whole case of the prosecution is believed as it is, apart from confessional statement of the applicant and other accused persons, there is no evidence or material which may even connect the applicant remotely with the commission of alleged offence and the whole story of the prosecution is in the realm of hypothesis. The applicant is languishing in jail in this case since 16.07.2023 and he is not having any previous criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

6. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed a heinous offence and, therefore, he is not entitled to be released on bail.

7. Having heard learned counsel for the parties and having perused the record, it is reflected that on 14.05.2023 a missing report was filed pertaining to missing of the deceased, who was the husband of the informant. On 19.05.2023, the dead-body of the deceased was recovered hanging with the branch of a tree. During the postmortem examination, three minor injuries have been noticed on the body of the deceased along with ligature mark and the cause of death has been ascertained as asphyxia as a result of antemortem hanging. The FIR in question has been lodged on 22.05.2023 wherein an apprehension/suspicion has been shown that the offence has been committed by the applicant and other accused persons. It appears to be an admitted situation that with regard to death of sister of the informant a criminal case under relevant penal provisions, including 304-B IPC was registered against co-accused, Dal Chand and his family members and it is contended with considerable force that the instant applicant is the son-in-law (*Damad*) of co-accused-Dal Chand. This factual matrix also appears to have been admitted by the prosecution witnesses who have stated that the deceased was being pressurized to make compromise in the case pertaining to death of sister of the informant. It is also the case of the defence that the applicant

may not be in a position to persuade the family members of his wife in order to compel them to arrive at a compromise, therefore, apart from suspicion there is nothing against the applicant. The applicant is languishing in jail in this case since 16.07.2023 without any previous criminal antecedents. 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.

8. 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**.

9. Let the accused/applicant-**Avadhesh Kumar**, 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.

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

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

12. 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.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 17.11.2023MVS/-