

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12311 of 2023

Applicant :- Suraj

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

Counsel for Applicant :- Rizwanul Haque Ansari, Mohd Javed

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard Shri Rizwanul Haque Ansari, learned counsel for the accused-applicant as well as Ms. Priyanka Pandey, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Suraj** on bail, who is involved in Case Crime No. 72 of 2023 under Sections 302 I.P.C, Police Station Kamlapur, District Sitapur.

3. Learned counsel for the applicant submitted that the First Information Report has been lodged by the mother of deceased, wherein it is mentioned that the son of the complainant namely Rajjan (deceased) had illicit relation with his niece (*bhanji*), daughter of his real sister. For the said reason, co-accused Ganga Devi along with the present applicant and other co-accused killed the son of the complainant. It has been further submitted that the statement of witnesses namely Ram Pravesh and Sajjan have been recorded under Section 161 Cr.P.C, wherein they have mentioned that they had seen the applicant along with the co-accused Ganga Devi (real sister of the deceased). Learned counsel for applicant further submitted that merely the fact that the witnesses had seen the applicant along with the co-accused does not make them responsible for committing the said crime as they had not seen the deceased along with them. He further submitted that only on the basis of confessional statement of applicant and the co-accused, they have been made the accused in the present case. He further stated that there is no direct or clinching evidence which indicates that the applicant was involved in commission of crime.

4. Learned counsel for the applicant further submitted that co-accused Ganga Devi @ Sumitra Devi has already been granted bail in Criminal Misc. Bail Application No. 11049 of 2023 vide order dated 11.09.2023. The case of the applicant is standing on a better footing than that of co-accused. He further stated that there is no previous criminal history of the applicant and he is languishing in jail since 14.03.2023.

5. Learned A.G.A has opposed the prayer of bail of the applicant but she could not dispute the fact that co-accused Sumitra Devi @ Ganga Devi has been granted bail.

6. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that there is no direct or clinching evidence against the applicant, the argument that confessional statement of the applicant has no evidentiary value, as per Section 25 of the Indian Evidence Act, the argument that co-accused Ganga Devi @ Sumitra Devi has already been granted bail, I find it to be a fit case for grant of bail.

7. Accordingly, the bail application is **allowed**.

8. Let the applicant **Suraj** 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 her 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.

9. 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 :- 6.12.2023
DiVYa/Rajneesh