

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13054 of 2023

Applicant :- Shubham

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

Counsel for Applicant :- Narendra Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. informs that he has procured complete instructions in the matter including up-to-date case diary and charge sheet in this case has also been submitted.

2. Vide order dated 06.11.2023 an opportunity was provided to the State to visualize the submissions made on behalf of the applicant with regard to the fact that the role of the instant applicant is identical with the role of other two accused persons, who have been granted bail by a co-ordinate Bench of this Court. It is in this background, the instant bail application is being disposed of today.

3. Heard Shri Narendra Gupta, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

4. This bail application has been moved by the accused/applicant- **Shubham** for grant of bail, in Case Crime No. 433 of 2022, under Section 302 I.P.C., Police Station Biswan, District Sitapur, during trial.

5. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The enmity between the parties is admitted to the informant as well as to all the witnesses whose statements have been recorded by the investigating officer. Thus, the implication of the applicant is on the basis of prior enmity.

6. It is further submitted that in the first information report, which has been lodged by the informant/Phoolchandra, who is the brother of the deceased, it is stated that on 28.08.2022 at about 8:00 am. his sister aged about 17 years had gone to ease out in the sugarcane field of Sriram but when she did not return for a long time, they started a search and when they arrived near the sugarcane field of Sriram, they saw named accused persons,

namely, Suraj, Shubham (applicant) and Rajnesh, who after seeing them at once fled away and on being searched, the dead body of the sister of the informant was found in that sugarcane field and it is suspected that the accused persons named in the F.I.R. have committed her murder.

7. It is vehemently submitted that there are material contradictions in the contents of the F.I.R., statement of the informant recorded earlier and his subsequent statement as well as in the statements of the prosecution witnesses. Elaborating further, it is submitted that in the F.I.R. as well as in the first statement of the informant, it is stated that he had allegedly seen the named accused persons at the '*chakrod*' while an improvement has been made by the informant in his second statement as well as in the statement of the other prosecution witnesses to the tune that the named accused persons were seen by them while they were running away from the sugarcane field of Sriram.

8. It is further submitted that the statements of prosecution witnesses, namely, Pinki, Rooprani and Meera, who have also claimed to have seen the applicant and other co-accused persons running away from the sugarcane field of Sriram have been recorded with inordinate delay i.e. on 12.09.2020 and 20.09.2020, respectively, which throws a cloud of suspicion over the whole prosecution story.

9. It is also submitted that apart from the suspicion/apprehension shown by the informant and other prosecution witnesses, there is only the confessional statement of the applicant and other co-accused persons obtained while they were in the custody of the police and the recovery, as shown by the police, may also not be believed and even if it is believed, the recovery of a '*darati*' is shown to have been recovered on the pointing of co-accused Suraj.

10. It is further submitted that the motive could only be available to Abhishek against whom the allegation of having one sided love affair with the deceased has been levelled. It is next submitted that the whole prosecution story is in the realm of suspicion and apprehension and the evidence/material, which has been collected by the investigating officer is not sufficient enough to secure the conviction of the applicant. Applicant is languishing in jail in this case since 21.09.2022 and he is not having any criminal history. Identically placed co-accused persons, namely, Rajnesh and Abhishek to whom the motive was alleged, have been granted bail by a co-ordinate Bench of this Court, vide order dated 31.10.2023 and 06.11.2023 passed in Criminal Misc. Bail Application No. 4685 of 2023 and 7850

of 2023. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

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

12. Having heard learned counsel for the parties and having perused the record, it is reflected that in the first information report, the informant who claimed himself to be the eye witness of the incident, claimed to have seen the applicant and other co-accused persons standing on the '*chakrod*'. It is highlighted by learned counsel for the applicant that in the additional statement of the informant an improvement has been made and he stated to have seen the accused persons running away from the sugarcane field of Sriram. It is also highlighted that statement of the other prosecution witnesses have been recorded with inordinate delay. The postmortem report of the deceased would sufficiently demonstrate that three incised wounds and one abrasion has been found and the cause of death has been ascertained due to 'shock and hemorrhage', as a result of 'antemortem injuries'. '*Darati*', which is claimed by the prosecution witnesses to be carried by the co-accused Suraj has also been recovered on the pointing of Suraj. Thus, in the considered opinion of this Court, the applicant may be granted bail otherwise as well as on the principle of parity. However, the role of co-accused Suraj appears to be distinguishable from the role of the instant applicant as well as those who have been granted bail by a co-ordinate Bench of this Court. Applicant is languishing in jail in this case since 21.09.2022 without any 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.

13. 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**.

14. Let the accused/applicant- **Shubham** 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.

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

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

17. 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.

Order Date :- 9.11.2023

Praveen