

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13495 of 2023

Applicant :- Bhagwandeem

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

Counsel for Applicant :- Atul Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Rejoinder affidavit filed by learned counsel for applicant is taken on record.
2. Heard Shri Atul Kumar Singh, learned counsel for the accused-applicant as well as Shri Rajneesh Kumar Verma, learned A.G.A. for the State and perused the record.
3. This bail application has been filed seeking release of the accused/applicant **Bhagwandeem** on bail, who is involved in Case Crime No. 618 of 2022 under Sections 302, 328, 34 I.P.C, Police Station Tandiawan, District Hardoi.
4. Learned counsel for the applicant submitted that the body of the deceased was recovered on 06.08.2022 and on the information given by the wife, inquest of the deceased was conducted on the same date i.e. 06.08.2022. The wife of deceased as well as Rakesh, Ram Asrey, Ram Kishun and Maha Singh are the near relatives of the deceased and the witnesses of the inquest. No prompt First Information Report was lodged at that time, rather an application under Section 156 (3) Cr.P.C was moved after 18 days i.e on 22.08.2022 by the wife of the deceased. In pursuance of the direction issued by the Court, First Information Report was lodged on 28.12.2022, under Section 302 I.P.C in which the applicant along with two other co-accused have been named and it is alleged in the F.I.R that on 06.08.2022, the applicant and other co-accused had taken her husband, where the co-accused Rajendra was also present and some altercation took place between them and they had beaten the deceased and even forced him to consume some substance due to which her husband died. Admittedly, after looking into the version of First Information Report, it is apparent that the complainant is not the eye witness of the said case. Learned counsel for applicant further submitted that the post-mortem was conducted on 07.08.2022 and the actual cause of death of deceased could not be ascertained. The wife of deceased lodged an application under Section 156 (3) Cr.P.C, mentioning therein that applicant along with the co-accused forced the deceased to consume some substance due to which he died. He further submitted that neither the complainant

nor the witnesses are the eye witness. The statement of the complainant as well as brother of deceased namely Ram Asrey, Maha Singh (uncle of deceased), Rakesh (brother) and Ram Kishun have been recorded and all of them have stated that the applicant along with other co-accused were carrying somebody. After looking into the statement of all the witnesses, it is apparent that they are not the eye witness of the said case and the FSL Report has been filed as (Annexure no. 8), which indicates that the deceased died due to Organophosphorus Insecticide. He further submitted that there is no direct evidence to indicate the involvement of applicant in committing the said crime. He further stated that it is a case of weak evidence. The post-mortem report indicates poison was found in the body of the deceased but the cause of death could not be ascertained, therefore, viscera was preserved.

5. Learned counsel for the applicant further stated that there is no previous criminal history of the applicant and he is languishing in jail since 11.07.2023.

6. Learned A.G.A has opposed the prayer of bail of the applicant.

7. 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 no direct or clinching evidence is found against the applicant, the argument that 18 days' belated application under Section 156(3) Cr.P.C was filed, the argument that all the five witnesses belong to the family of the deceased and out of them, three witnesses were present at the time of inquest on 06.08.2022 but no F.I.R was not lodged promptly, I find it to be a fit case for grant of bail.

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

9. Let the applicant **Bhagwandeem** 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.

10. 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 :- 13.12.2023

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