

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13506 of 2023

Applicant :- Shiv Prasad Tewari Alias Nanku And Another

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

Counsel for Applicant :- Dadu Ram Shukla (D.R. Shukla),Manoj Kumar Singh

Counsel for Opposite Party :- G.A.,Dr. Pooja Singh,Surya Prakash Tiwari

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed by the complainant/informant and rejoinder affidavit filed on behalf of the applicant are taken on record.
2. Heard Shri Dadu Ram Shukla, learned counsel for the accused-applicants as well as learned counsel representing the State, Dr. Pooja Singh, learned counsel appearing for the complainant/informant and perused the record.
3. This bail application has been moved by the accused/applicants namely **Shiv Prasad Tewari @ Nanku** and **Vikas Tewari** for grant of bail, in Case Crime No.180 of 2023, under Section 302 I.P.C., Police Station Khargupur, District Gonda, during trial.
4. Learned counsel for the accused-applicants while pressing the bail application submits that the applicants have been falsely implicated in this case and they have not committed any offence as claimed by the prosecution.
5. It is further submitted that the applicants were not named in the F.I.R., which has been lodged by father of the deceased namely Radhe Shyam Yadav on 08.06.2023 at Police Station Khargupur, District Gonda alleging therein that the deceased had received phone calls on his mobile phone and 09-10pm. on 07.06.2023, where-after he left the home and his dead body was recovered on the next day i.e. on 08.06.2023 from an agricultural field of one Ambrisha. In the statement of the informant recorded under Section 161 Cr.P.C., an apprehension has been shown that the deceased might have been done to death by the applicants.

6. It is further submitted that during the course of investigation, the statement of Radhe Shyam Yadav was recorded, who was related to the deceased as brother-in-law (sala/brother of his wife) and he has stated that at the relevant point of time, he was with the deceased and they have consumed liquor and thereafter they have gone to their homes. It is also submitted that after his arrival at his house, he received many phone calls on his mobile phone. A case has been developed that as the applicants were having inimical relations with the deceased, he has been done to death by the applicants.

7. It is vehemently submitted that apart from apprehension and suspicion alone, there is no material/evidence against the applicants and charge sheet also appears to have been filed only on suspicion without there being any evidence/material. Confessional statement of the applicants is also shown to have been recorded, wherein they have alleged their complicity in the crime, however, said confessional statement recorded while the applicants were in the custody of the police may not be proved against them by virtue of the bar contained under Section 26 of the Indian Evidence Act.

8. It is also submitted that the applicant no.1 namely Shiv Prasad Tewari Alias Nanku is in jail in this case since 10.08.2023 and applicant no.2 namely Vikas Tewari is in jail in this case since 12.08.2023 and they are not having any criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail the applicants may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A., however, opposes the prayer of bail of the applicants on the ground that the applicants are accused of committing an heinous offence and having regard to the material/evidence available against the applicants, they are not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicants.

10. Dr. Pooja Singh, learned counsel appearing for the complainant/informant vehemently opposes the prayer of bail of the applicants on the ground that the phone calls, which have been received on the mobile phone of the deceased, could only be attributed to the applicants and having regard to the Call Details Record collected by the investigating officer and as they have confessed their guilt, the applicants are not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is evident that the applicants and deceased

were having inimical relationship from before lodging of the F.I.R. with regard to the instant case. The deceased is alleged to have received some phone calls in the night of 07.06.2023 and thereafter he left his home and it was on the next day, his dead body was found in an agricultural field. It is apprehended that as the applicants were having inimical relations with the deceased, he has been done to death. Postmortem of the deceased would reveal that the deceased has sustained five abrasions on various part of his body along with a ligature mark around his neck and the death of the deceased is shown to have caused due to asphyxia as a result of ante mortem strangulation. The applicants are shown to have been arrested and admittedly have confessed their guilt. The defence of the applicants appears to be that apart from their confessional statement, which could not be proved against them by virtue of the bar contained under Section 26 of the Indian Evidence Act, there is no iota of evidence against them. It is only on the basis of suspicion and apprehension F.I.R. has been lodged and without fair investigation, charge sheet has been submitted. Be that as it may, the finer points of the conflict facts may only be decided by the trial court after full fledged trial. The applicant no.1 namely Shiv Prasad Tewari Alias Nanku is in jail in this case since 10.08.2023 and applicant no.2 namely Vikas Tewari is in jail in this case since 12.08.2023 and they are not having any criminal history. Charge sheet in this case has already been filed. The presence of the applicants could be secured before the trial court by placing adequate conditions.

12. Having regard to the overall facts and circumstances of the case and 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 applicants have made out a case for bail. The bail application is thus **allowed**.

13. Let the accused/applicants namely **Shiv Prasad Tewari @ Nanku** and **Vikas Tewari** involved in above-mentioned case, be released on bail on their furnishing personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicants shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicants shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicants shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

16. 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 of this Court on the merits of the case.

Order Date :- 11.12.2023

Anupam S/-