

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14123 of 2023

Applicant :- Salman

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

Counsel for Applicant :- Mulayam Singh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Power/vakalatnama filed by Shri Surendra Singh, Advocate on behalf of the complainant/informant is taken on record.
2. Heard learned counsel for the accused-applicant; learned A.G.A. for the State as well as Shri Surendra Singh, learned counsel for the informant/ complainant and perused the record.
3. This bail application has been moved by the accused/applicant- **Salman** for grant of bail, in Case Crime No. 239/2021, under Sections 364, 302 & 201 I.P.C., Police Station- Ramnagar, District- Barabanki, during trial.
4. 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.
5. It is next submitted that the FIR of this case has been lodged by the informant Rajveer Singh on 27.6.2021 alleging therein that on account of prior established enmity on 23.6.2021 at 7.00 pm, some stone pelting was made by the accused persons and it was also intimidated that Virendra Pratap Singh @ Baua would be done to death and on 26.6.2021, the said Virendra Pratap Singh @ Baua had gone to the agricultural fields and from there, he was abducted and it was apprehended that he has been done to death by the named accused persons.
6. It is further submitted that the after lodging of the FIR, the investigation of this case remained pending for about two years and thereafter, on 27.1.2022, a skeleton is shown to have been found in an agricultural field, which had already been searched earlier and the DNA samples were taken and eventually, the samples were matched and the skeleton was identified to be of the deceased Virendra Pratap Singh @ Baua and thereafter, the

additional statement of the informant/complainant was recorded wherein an apprehension has been shown that the deceased might have been done to death by the named accused persons including the applicant.

7. Highlighting the above facts, it is vehemently submitted that there is no iota of evidence against the applicant except suspicion and apprehension. After thorough investigation, a report under Section 169 CrPC was filed by the investigating officer in favour of the applicant also and simply after recording the additional statement of the informant/complainant without there being any additional evidence or material collected, the chargesheet has been filed. It is also submitted that identically placed co-accused namely, Vimal Singh and Shivam Singh have already been granted bail by this Court vide orders dated 17.10.2023 and 8.11.2023 passed in Criminal Misc. Bail Application Nos. 7153 of 2023 and 6306 of 2023, respectively.

8. It is further submitted that till now, only one prosecution witness has been testified before the trial court. He is in jail in this case since 27.01.2023 and he is not having any criminal antecedents. It is undertaken that the applicant will remain present before the trial Court in case, the facility of bail be granted to him and will not seek any adjournment especially when the prosecution witness would be in attendance. Chargesheet in the instant case has already been submitted 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.

9. 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 having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

10. Shri Surendra Singh, learned counsel appearing for the informant/ complainant while drawing attention of this Court towards the additional statement of Sukhdev Singh submits that the co-accused Vimal Singh had illicit relationship with the wife of Pradip and they were seen in a compromising position by the deceased and it is on account of this, the deceased has been abducted and done to death.

11. It is further submitted that during the course of the investigation, a mobile phone was taken by the investigating officer from the wife of Pradip and the same was containing obscene Whatsapp chats between the co-accused Vimal Singh

and the wife of Pradip and it is only on that basis, the deceased has been done to death. Thus, having regard to the evidence available against the applicant, 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 after lodging of the first information report pertaining to the missing of the deceased wherein only an apprehension has been shown that the offence might have been committed by the applicant and other co-accused persons, no material or evidence could be collected by the investigating officer as the statement of many witnesses recorded would not show any complicity of the applicant and it is in this background that even after recovery of the skeleton and matching of the DNA samples, the report under Section 169 Cr.P.C. was filed in favour of the applicant. Thereafter, the additional statement of the informant is shown to have been recorded wherein again an apprehension has been shown that the offence has been committed by the applicant. I have gone through the material which has been placed before this Court by the State in its counter affidavit. Apart from the statement of some prosecution witnesses wherein only an apprehension has been shown against the applicant and other co-accused person, I do not find any material or evidence which may connect the applicant with the crime. Certainly the case of the prosecution against the applicant is based on circumstantial evidence and it is for the trial Court to appreciate the circumstances which would be produced before it in the shape of witnesses. Applicant is in jail in this case since 27.01.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions. Identically placed co-accused Shivam Singh has already been granted bail by coordinate Bench of this Court.

13. 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 applicant has made out a case for bail. The bail application is thus allowed.

14. Let the accused/applicant- **Salman** 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 of this Court on the merits of the case.

Order Date :- 6.12.2023

Shravan