

Court No. - 13

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 385 of 2020

Applicant :- Karan

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Mishra, Akansha Dubey, Pradeep Kumar Rai, Prakarsh Pandey, Praveen Kumar Shukla

Counsel for Opposite Party :- G.A., Anand Dubey, Deepak Yadav, Vishwa Nath Singh

Hon'ble Mohd. Faiz Alam Khan, J.

Heard Shri Pradeep Kumar Rai, learned counsel for the accused-applicant, Shri Anand Dubey, learned counsel for the informant/complainant as well as learned A.G.A. for the State and perused the record.

This bail application has been moved by the accused/applicant- **Karan** for grant of bail, in Case Crime No. 616 of 2019, under Section 302 and 201 I.P.C., Police Station Kotwali Nagar, District Barabanki, during trial.

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.

It is further submitted that the F.I.R. of this case was lodged by the father of deceased Pappu on 14.07.2019 at 7:11 hours at Police Station Kotwali, District Barabanki against named accused persons namely Sarvesh, Karan and Sahajram stating therein that instant applicant and co-accused Sarvesh had taken the deceased with them on 12.07.2019 at about 5:00 pm. and thereafter when the deceased did not return, a search was launched but he could not be traced and the dead body of the deceased was found on 14.07.2019 at the Bank of 'River Rate'. Subsequently the dead body of the named accused person namely Sarvesh was also found on 15.07.2019 on the bank of the same river.

Highlighting the above facts, it is vehemently submitted that after investigation the investigating officer has exonerated accused Sahajram and only on the basis of confessional statements recorded while the accused persons were in the custody of the police, the charge sheet has been filed against the instant applicant- Karan and co-accused Vinay Yadav. It is

vehemently submitted that the two deceased persons were done to death, as is evident from the postmortem report, by strangulation and the only evidence which is available against the instant applicant is of 'last seen' and it is stated that on 12.07.2019 at about 5:00 pm. the deceased Pappu had gone with another deceased Sarvesh and instant applicant Karan and as per the admitted case of the prosecution the dead body of deceased Pappu was recovered on 14.07.2019 after 48 hours of their departure from the house of the deceased Pappu and there was sufficient time for any other person to come into play to commit the offence, moreover, no motive has been assigned in the first information report or in the statement of the informant recorded under Section 161 Cr.P.C.

It is vehemently submitted that case of the prosecution is based only and only on the confessional statement of the applicant and other co-accused persons and by virtue of bar contained under Section 26 of the Indian Evidence Act, the confessional statement so far as the relevant part pertaining to the commission of the offence is concerned, could not be proved before the trial court and no recovery of any kind has been effected either from the accused or on his pointing out. Thus, the only evidence which is available against the applicant is his confessional statement as well as the confessional statement of co-accused namely Vinay Yadav and identically placed co-accused Vinay Yadav has been granted bail by a co-ordinate Bench of this Court, vide order dated 18.06.2020 passed in Bail No. 10149 of 2019.

It is also submitted that applicant is languishing in jail in this case since 19.07.2019 and he is not having any criminal antecedents. Charge sheet in this case has already been filed and till now only three prosecution witnesses (none of them is a witness of fact) have been testified before the trial court and it is not expected that the trial may conclude in near future. There is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

Learned A.G.A. on the other hand submits that having regard to the heinousness of the offence, the applicant is not entitled to be released on bail.

Shri Anand Dubey, learned counsel for the informant/complainant vehement submits that the case of the instant applicant namely Karan is distinguishable from the case of co-accused Vinay Yadav, who at first was not named in the F.I.R. and there was no evidence of 'last seen' available against him, while against instant applicant- Karan he is last seen in the company of the deceased.

It is also submitted that during the course of investigation the investigating officer has also recorded the statement of one Ram Kunwar Yadav, who had stated that a quarrel had taken place between the applicant and the deceased Pappu. It is next submitted that there is a close proximity in time so far as the 'last seen' of the deceased with the instant applicant and the time of death of the deceased Pappu is concerned. Therefore, the applicant is not entitled to be released on bail.

Having heard learned counsel for the parties and having perused the record, it appears to be case based on circumstantial evidence, as nobody has seen commission of offence and evidence of only 'last seen' is available against applicant. It is also an admitted case of the prosecution that in the F.I.R. lodged by the father of the deceased Pappu on 14.07.2019, after the recovery of the dead body of the deceased Pappu, only an apprehension has been shown against the instant applicant, deceased Sarvesh and one Sahajram while the two accused persons namely Sarvesh and instant applicant Karan are shown to have taken the deceased Pappu with them at 12.07.2019 at 5:00 pm. The dead body of the deceased Sarvesh was also recovered on 15.07.2019 from the bank of the same 'rate river' and his cause of death was also shown due to 'strangulation. Thereafter the applicant and co-accused Vinod are shown to have been arrested and they have stated to have confessed their guilt while in the custody of the police. It is vehemently submitted on behalf of the applicant that apart from the confessional statement of the instant applicant and other co-accused person there is no evidence against the applicant. In this regard learned counsel for the applicant has drawn the attention of this Court towards the statement of one Ram Kunwar Yadav testified as P.W.-3 before the trial court, a copy of whose statement has been brought on record through supplementary affidavit dated 22.08.2022, wherein he has not narrated anything about any quarrel allegedly taken place between the instant applicant and deceased Pappu at the relevant time. Identically placed co-accused person namely Vinay Yadav has already been released on bail by a co-ordinate Bench of this Court.

Thus, in the considered opinion of this Court, the instant applicant is also entitled to be released on bail on the ground of parity, as the case of the prosecution is identical so far as both the accused persons are concerned, moreso in the background of the fact that the instant applicant is languishing in jail in this case since 19.07.2019 and is also not having any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

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**.

Let the accused/applicant- **Karan** involved in above-mentioned case, be released on bail on his furnishing a personal bond with **two heavy sureties** in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not attempt to contact any of the prosecution witness(s) directly, indirectly or through any social platform and the violation of this condition alone shall be a sufficient ground for the trial court to cancel the facility of bail granted by this Court.

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

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

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

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

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

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 :- 3.1.2023

Praveen