

Court No. - 43

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10157 of 2021

Applicant :- Jitendra Tyagi

Opposite Party :- State of U.P.

Counsel for Applicant :- Satish Kumar Tyagi

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

Matter taken up through Video Conferencing.

Heard Sri Amrendra Nath Singh, learned Senior Advocate assisted by Sri Satish Kumar Tyagi, learned counsel for the applicant, Sri Virendra Kumar Maurya, learned AGA for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Jitendra Tyagi, seeking enlargement on bail during trial in connection with Case Crime/F.I.R. No. 1600 of 2020, under Sections 302, 120-B I.P.C. registered at P.S. Sihani Gate, District Ghaziabad.

Learned counsel for the applicant argued that the first information report of the present case has been registered by Abhishek Tyagi son of the deceased Naresh Tyagi against two unknown persons, who are alleged to have shot his father. It is argued that subsequently the statement under section 161 Cr.P.C. of the first information was recorded, copy of which has been annexed as Annexure No.2 to the affidavit even in which the first informant does not name any accused but proceeded to state that although his father was a contractor, but he had no animosity with any one. It is argued that after about 20 days of the said incident one Pankaj Tyagi was interrogated by the Investigating Officer on 29.10.2020, whose statement is annexed as Annexure No.4 to the affidavit, who for the first time has disclosed that he was getting the marriage of his daughter and on the phone he was talking to his son-in-law Mr. Bheem, who informed him that Jitendra Tyagi, the present applicant who is his brother-in-law has committed a murder, on which for the first time the name of the applicant has surfaced. It is argued that the said statement is a concocted statement that too after 20 days of the occurrence without any corroborative evidence. Learned Senior Counsel has placed before the Court Annexure No.6 and argued that the police gave a notice under Section 160 Cr.P.C. to Vinod Tyagi brother of the applicant on which he along with applicant went to the police station

wherein the confessional statement of the applicant was recorded and then the applicant has been apprehended. It is argued that there is no recovery either on the pointing out or possession of the applicant of any incriminating material whatsoever. Learned counsel has placed paragraph No.29 of the affidavit filed in support of bail application and has stated that as per his instructions, the applicant was involved in three criminal cases, but all the three cases have ended into acquittal, copy of judgments are annexed as Annexure No.10 to the affidavit. It is argued that the applicant has been falsely implicated and there is no credible evidence against him. It is further argued that applicant has no motive whatsoever to commit the offence, as is itself evident from the statement of the son of deceased, who has stated that his father had no animosity with any one. It is argued that the police just in order to show good work, has implicated the applicant in the present case. It is argued that applicant is in jail since 18.11.2020.

Per contra, learned AGA opposed the prayer for bail and argued that although the applicant is named in the first information report, but his name has been disclosed for the first time in the statement of Pankaj Tyagi, who got an information through Mr. Bheem. It is argued that he was informed that the applicant has committed the murder. It is argued that apart from the said three cases there are four other cases against the applicant, but learned AGA states that other cases are petty cases and old cases ranging from the year 2013-17 but there are no new and fresh cases to show the involvement of the applicant in recent time. It is argued that there is confessional statement of the applicant of committing the aforesaid offence. It is argued that prayer for bail be rejected.

After having heard learned counsel for the parties and perusing the record, it is apparent that first information report has been lodged against unknown persons. The name of the applicant has surfaced for the first time after 20 days of the incident that too on the basis of hearsay evidence. The next evidence coming forward is confessional statement of the applicant, which is inadmissible piece of evidence.

Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

Let the applicant- **Jitendra Tyagi** , be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being

imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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., may be issued and if 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 I.P.C.

(V) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

The bail application is allowed.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

The computer generated copy of such order shall be self

attested by the counsel of the party concerned.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 28.5.2021

Tamang

(Samit Gopal,J.)