

**Court No. - 76**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 33329 of 2020

**Applicant :-** Krishna Kant

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Shad Khan, Amit Misra, Chandra Kant Tripathi, Dhananjay Kumar Pandey, Radhey Shyam Yadav, Rajesh Kumar Vishwakarma

**Counsel for Opposite Party :-** G.A., Amit Singh

**Hon'ble Shekhar Kumar Yadav, J.**

Mr Viresh Mishra, learned Senior Counsel assisted by Mr M. K. Pandey, learned counsel for the applicant and Mr Amit Singh, learned counsel for the informant and learned AGA are present.

This is **second bail application** moved on behalf of the applicant. The first bail application of applicant was heard and rejected by this Court vide order dated 21.11.2019 passed in Criminal Misc Bail Application No. 51273 of 2019. Thereafter, one of the co accused, namely, Anil @ Badela has filed Special Leave Petition (Criminal) Diary No. 13477 of 2020 against the order dated 21.11.2019, before Hon'ble Apex Court, which has also been dismissed vide order dated 20.7.2020.

The present second bail application has been filed on the new ground that two of the witnesses of last seen, namely, Om Prakash (P.W.-1) and Ramesh Chandra (P.W.-2) have been examined before the Trial Court but they have not supported the prosecution case and they have been declared hostile. It is further submitted that informant namely, Madan (P.W.-3) has also been examined, who has also not supported the case before the Trial Court and there is remote possibility of conviction and also there no likelihood of earlier conclusion of the trial, hence the applicant may be released on bail on these grounds.

That initially occurrence is said to have taken place on 1.6.2018 and the FIR was lodged by informant, namely, Madan on 2.6.2018 at 16.18 p.m. bearing Case Crime No. 333 of 2018, under Section 302 IPC at P.S. Goverdhan, District Mathura alleging therein that on 1.6.2018 at about 8.00 p.m. in the night, the applicant and co accused Anil Badela took along with them, son of informant, namely, Govind for collection of parking 'Theka'. It is alleged that on 2.6.2018 at about 8.30 a.m. in the morning, the police informed that dead body of his son was found near Sankhi Nagla. The body of his son was sent for postmortem and suspicion was raised upon the applicant and co accused Anil @ Badela that they killed the son of the informant.

During investigation, Investigating Officer recorded the statement of informant and other witnesses, namely, Ramesh Chandra, Om Prakash, Radha Ballabh, Ram Bau, Dhaniram, Prem Singh, Chohal Singh, Raghuvir, Kama Singh, Radhey Lat etc. under Section 161 Cr.P.C. During the course of investigation, Investigating Officer converted the case under Section 302 IPC to Sections 279, 304-A, 427 IPC on 18.07.2018 on the basis of the report of State Medico Legal Cell, Lucknow. Thereafter again on 15.12.2018 the case was converted to Section 304-A, 427 IPC and after the investigation is over, charge sheet was submitted under Section 302 IPC against the applicant and co accused.

Learned counsel for the applicant has submitted that the F.I.R. of this case was lodged by the informant in regard to murder of his son by the named accused persons. It is further contended that the applicant has been falsely implicated in the present case. There is no eye witness account of the incident. There is delay in lodging of the FIR and no body had seen the applicant committing the offence. It is alleged that deceased was last seen with the applicant and co-accused persons but only on that basis it cannot be said that applicant murdered deceased. Learned counsel for the applicant has submitted that the applicant is innocent and has been falsely implicated in this case on the basis of suspicion and there is no motive assigned to the applicant by the prosecution. Nothing incriminating article has been recovered on the confessional statement and pointing out of the applicant. The applicant has been languishing in jail since 05.10.2019. It is further submitted that during trial, the Doctor has been examined as P.W.-7 and he in his deposition has stated that the cause of death of deceased might be due to accidental injuries and, therefore, the applicant has been falsely roped in the present case.

Learned counsel for the State as well as learned counsel for the informant opposed the prayer and submitted that sufficient evidence is available on record to connect the applicant with the crime. It is further contended that the prosecution case is based on circumstantial evidence. It is further submitted that on 01.06.2018 at about 8 p.m. in the night the deceased accompanied to all the two accused persons including the applicant and this last seen evidence is of the informant and other witnesses, who have stated in their statements under Section 161 Cr.P.C. that they have seen the deceased accompanying the accused persons. Thereafter, till late night, his son did not return and on the next day morning, the dead body was recovered. The time gap between the last seen of the deceased with the accused-applicant and the recovery of dead body was so less that it was the applicant and co accused, who

were to explain, what happened with the deceased and how his death was committed? Hence, in these circumstances, the applicant is not entitled to be released on bail. It is further submitted that the trial is going on and the same be expedited.

The main ground urged by the learned counsel for the applicant is that two witnesses of last seen have turned hostile and the applicant is in jail for more than three years. Even if, all the witnesses are examined, the possibility of the case ending in conviction of the applicant is very remote and, therefore, the applicant may be enlarged on bail. On the other hand, submission of learned AGA is that though two of the witnesses of last seen have turned hostile and the informant (P.W-3) has also not supported the case of the prosecution, the trial court would be at liberty to take a view whether to convict the accused or not based on the other evidence given by other witnesses during trial. ***Hostility of the witnesses cannot be a new ground for granting bail to accused applicant. If any opinion is taken on the basis of the evidence given by the hostile witnesses, it amounts to evaluating the evidence by this Court, which is impermissible while deciding the bail application under Section 439 Cr.P.C.*** It is well settled principle that trial court can record conviction based on the evidence of the Investigating Officer also. Therefore, the ground urged now cannot be considered for granting bail to accused applicant.

It is alleged that applicant and other co-accused were last seen with the deceased on the fateful night. So, considering the facts and circumstances of the case, and looking to the nature and severity of allegations, without commenting on merits of the case, at this stage, this Court does not find it to be a fit case for grant of bail.

Accordingly, present application under Section 439 Cr.P.C. stands **rejected** and is consigned to record. However, it appears from the record that applicant is in custody and the trial is still going on, therefore, the trial Court can only be directed to expedite the trial.

As such, trial Court is directed to expedite the trial and dispose of the same as early as possible.

**Order Date :- 16.12.2022/RavindraKSingh**