

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24592 of 2020

Applicant :- Sapna

Opposite Party :- State of U.P.

Counsel for Applicant :- R.P.S. Chauhan

Counsel for Opposite Party :- G.A.,Akhilesh Kumar,Preet Pal Singh Rathore

Hon'ble Siddharth,J.

Heard Sri R. P. S. Chauhan, learned counsel for the applicant, Sri Preet Pal Singh Rathore, learned counsel for the informant; learned A.G.A. for the State and perused the material on record.

First information report has been lodged regarding commission of offence of abduction and murder of one person.

Deceased, Vivek Kumar Gupta, went missing on 1.08.2019 and on 12.08.2019 missing report was lodged with the police. After 26 days first information report was lodged on 06.09.2019 against unknown accused persons. The Investigating Officer recorded the statements of many witnesses and also recorded the statement of the informant. On 14.10.2019 the supplementary statement of the informant was recorded wherein also he did not named the applicant or his family members. The Investigating Officer interrogated the suspected accused, Smt. Chetna, Vikas Maurya, Sobhit @ Annu and Sumit and they also did not disclosed the name of the applicants. On the basis of information received from informer the applicant and her husband, Vishesh Kumar @ Bampi and the co-accused, Arjun were implicated in this case. The applicant was arrested along with her 2 years old minor son and her confessional statement was recorded confessing to the murder of the deceased by her husband, Vishesh Kumar @ Bampi and co-accused, Arjun and concealment of the dead body of the deceased. Thereafter dead body was recovered from her house.

Learned counsel for the applicant submits that the dead body of the deceased was not recovered on the pointing out of the applicant and her signatures were forcibly obtained on the recovery memo., dated 13.12.2019. The cause of the death of deceased was not ascertained in post mortem nor time of death

was ascertained. The applicant has been implicated in this case only on the basis of her confessional statement. The recovery of one spade and one *Sabble* was allegedly made from the pointing out of co-accused, Arjun and no blood stains were found thereon. Recovery of one *Khurpi* (digging instrument) was allegedly shown from the co-accused and husband of the applicant, Vishesh Kumar @ Bampi. There is no eye witness of the incident and on the basis of circumstantial evidence of recovery of dead body of the deceased after 4 months and two days of the occurrence and the agricultural implements allegedly recovered after four months 13 days, the applicant and the co-accused persons have been implicated. No recovery has been made from the applicant. The role of causing death of the deceased from her confessional statement has been assigned to co-accused persons and recovery of weapons has also allegedly been made from them. There is no motive of crime attributed to the applicant and considering the allegation of commission of offence of conspiracy no prior meeting of minds of the applicant with the co-accused has been proved. The confessional statement of the applicant and co-accused are not admissible at this stage. No finger print on the alleged recovery of agricultural implement was collected for examination by forensic expert. The applicant has been implicated only because she is wife of the co-accused, Vishesh Kumar @ Bampi. The house of the applicant is very big and has vast open space as clear from the site plan and it is not clear who concealed dead body of deceased there. Such fact cannot be said to be in her special knowledge. The motive attributed to the co-accused, Vivesh Kumar @ Bamp regarding money dispute is very weak type of evidence. The applicant is having one four years son and one two years son. The younger son is aged about two years and is living along with her in jail. She has no previous criminal history and is in jail since 13.12.2019.

Sri Preet Pal Singh, learned counsel for the informant, has vehemently opposed the prayer of applicant for bail. He submits that the victim in collusion with her husband has caused death of the deceased and recovery of dead body has been made from her house. He has stated that two out of 15 witnesses have been examined before the trial court. The trial is proceeding. The applicant is not entitled to be released on bail keeping in view the gravity of offence committed by her in collusion with two co-accused.

On the other hand learned AGA has also opposed the prayer for bail but could not dispute the above submissions.

After considering the rival submissions, this court finds that the entire prosecution case is based on the confessional statements of the applicant and the co-accused. Even in the confessional statement of applicant the role of causing the murder of the deceased has not been assigned to her. The trial is not likely to be concluded in near future. The applicant is in jail along with her two years old son. The child is of growing age and the atmosphere in jail will effect him adversely. This is first implication of the applicant. She is also entitled the benefit of Section 437(1) Cr.P.C.

Before parting with this case it deserves to be brought on record that after this bail application was allowed a woman standing in court room protested in loud voice and was taken out forcibly by the lawyers and litigants. Thereafter she created lots of disturbance outside the court. Learned counsel for the informant on being asked who was the lady expressed his ignorance but clearly she was from the informant side and her conduct was unbecoming of a fair litigant.

Regarding long incarceration of under trials prisoners in jail due to delay in conclusion of trial, the Hon'ble Apex Court in re: ***Union of India vs. K.A. Najeeb reported in AIR 2021 Supreme Court 712*** has held in Para 16 of the judgment being reproduced herein below as follows :-

"This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on

bail."

Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, submissions of the learned counsel for the parties noted herein above, larger mandate of the Article 21 of the Constitution of India recent judgment dated 11.07.2022 of the Apex Court in the case of **Satendra Kumar Antil Vs. C.B.I., passed in S.L.P (Crl.) No.5191 of 2021** and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant, **Sapna**, involved in Case Crime No.226 of 2019, under Sections 364A, 302, 201, 120-B IPC, Police Station Bisauli, District- Budaun be released on bail on her furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

- (i) The applicant shall not tamper with the evidence or threaten the witnesses.
- (ii) The applicant shall file an undertaking to the effect that she shall not seek any adjournment on the dates 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.
- (iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against her under Section 229-A of the Indian Penal Code.
- (iv) In case the applicant misuse the liberty of bail during trial and in order to secure her presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 of the Indian Penal Code.
- (v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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 her in accordance with law.

In case of breach of any of the above conditions, the complainant is free to move an application for cancellation of bail before this court.

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

The trial court is directed to conclude the trial against the applicant as expeditiously as possible, preferable within a period of six months from the date of production of certified copy of this order.

Order Date :- 23.9.2022

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