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Court : Allahabad

Decided On : Aug-22-2012

Judge : Naheed Ara Moonis

Appeal No. : Criminal Misc. Bail Application No. 4914 of 2011

Appellant : Chandra Kishore Misra

Respondent : State of Up

Judgement :

1. HEARD the learned counsel for the applicant, the learned AGA and perused the record.

2. THE present bail application has been moved by the applicant, Chandra Kishore Misra in case crime no.142 of 2010, under Section 302, 120B IPC, P.S. Bazaria, District Kanpur Nagar, with a prayer that he may be admitted to bail during the pendency of trial. This is a case of fratricide; the applicant has killed his own brother by strangulation. The incident had occurred at about 1:00 p.m. on 26.7.2010 and the first information report was lodged by the wife of the deceased on the same day at about 1:30 p.m. After inquest the postmortem was conducted, wherein as many as six injuries were found on the neck of the deceased. The statements of the complainant and eye witness were recorded; who had stated that the applicant had threw the deceased on the ground and pressed his neck till he was dead. Submission of the learned counsel for the applicant is that, the

applicant is not a mentally fit person, and it is stated by the witnesses, that on the instigation of other accused persons, the applicant had pressed the neck of his brother, the deceased, on account of property dispute between them, whereas the first informant has stated in the first information report, that the applicant and his other brothers have assaulted the deceased and committed his murder.

It is further submitted that, the applicant is an unmarried person, and as such he has nothing to do with the property dispute. The charge sheet has already been submitted against Kaushal Kishore Mishra and Himanshu Mishra. The other persons, named in the first information report, have been dropped by the police during investigation, which proves the entire prosecution case doubtful with regard to the manner of incident. It is next contended that, the complainant, who is the wife of the deceased, had not supported the prosecution case, when her statement was recorded during trial she had not supported the prosecution case, and as such she was declared hostile, therefore, the applicant deserves to be enlarged on bail. The applicant is in jail since 27.7.2010, and in case he is enlarged on bail he will not misuse the liberty of bail. Per contra, the learned AGA has contended that, there is specific and consistent prosecution case, that the applicant had committed murder of his own brother by pressing his neck till he died, and he is involved along with his other family members in the commission of aforesaid offence. The statements of other witnesses named in the first information report, have been recorded before the court below, who had stated that the applicant had strangulated the deceased. The charge sheet has also been submitted against him along with other accused persons, who are facing trial. The statements of the independent witnesses recorded before the court below, fully supports the prosecution case. The postmortem report indicates that, there are as many as six injuries on the face and neck of the deceased. Therefore, at this stage it cannot be said that, the applicant was not involved in the aforesaid commission of offence. Mere long incarceration in jail is no ground to get indulgence of bail. The gravity of offence is too much. There is active participation of the applicant in the commission of offence. In case the applicant is enlarged on bail, he will try to intimidate the witnesses and will try to abscond; therefore, the applicant does not deserve to be enlarging on bail. I have considered the rival submissions made by the learned counsels for the parties advanced at the bar. Specific role has been

attributed to the applicant in the commission of murder of his own brother. The prosecution case is consistent with the postmortem report, wherein as many as six injuries have been found on the neck, face and shoulder of the deceased. I do not find it a fit case for bail; therefore, the bail application is rejected.

3. HOWEVER, the trial court is directed to proceed with the case and conclude the trial expeditiously on its own merit, if possible, within a period of six months from the date of receiving of the certified copy of the order filed by the applicant, applying provision of Section 309 Cr.P.C., uninfluenced by any observation made herein above, provided that the accused-applicant shall cooperate with expeditious disposal of trial.

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