

A.F.R.Court No. - 1WWW.LIVELAW.IN**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 43160 of 2020**Applicant :-** Uday Pratap @ Dau**Opposite Party :-** State of U.P.**Counsel for Applicant :-** Satendra Singh**Counsel for Opposite Party :-** G.A., Satya Narayan Yadav**Hon'ble Samit Gopal,J.**

1. Heard Sri Satendra Singh, learned counsel for the applicant, Sri Satya Narayan Yadav, learned counsel for the informant, Sri Prabhash Pandey, learned Brief Holder for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Uday Pratap@Dau, seeking enlargement on bail during trial in connection with Case Crime No. 12 of 2020, under Sections 364, 302, 201, 120B and 34 I.P.C., registered at P.S. Phareeha, District Firozabad.

3. Learned counsel for the applicant argued that the present case is a case of circumstantial evidence. It is argued that Pradeep Yadav@Kaloo who is the son of the first informant, went away from the house 31.1.2020 at about 7.00 P.M. and since then went missing. It is further argued that the first information report of the present case was lodged after a great delay as was lodged on 5.2.2020 by Rajveer Singh the father of Pradeep Yadav@Kaloo. Learned counsel for the applicant further argued that the applicant is not named in the F.I.R. and during the course of search the first informant sent his younger son Dinesh to know regarding whereabouts of Pradeep Yadav@Kaloo on which Dinesh came back to home and informed that Sunil Chauhan the owner of motorcycle agency, Rajveer Singh@Singhania, Tej Prakash and 2-3 other unknown persons were sitting at Honda Motorcycle Agency, Fariha, Firozabad and consuming liquor. On seeing this Dinesh came back to home but Pradeep

Yadav@Kaloo did not return back. It is argued that the first informant states that he went to the police station to given information about missing of his son, in consequence of which the police went to see the C.C.T.V. footage installed near the agency where the said persons were consuming liquor and saw that his son was seen going out at about 08.08 P.M. along with Sunil Chauhan. It is argued that in the statement of the first informant recorded under Section 161Cr.P.C., copy of which has been annexed as annexure no. 2 to the affidavit filed in support of bail application, he has stated the same version as that mentioned in the First Information Report. It is argued that subsequently co-accused Tej Pratap was arrested and he gave his confessional statement to the police and also named the applicant therein. Copy of the said statement has been placed before the Court which is annexed as annexure no. 5 to the affidavit.

4. It is then argued that later on the applicant was arrested on 18.3.2020 and one knife and Rs.190/- were recovered from him. Learned counsel has placed post mortem report of the deceased and has argued that the doctor could not ascertain the cause of death and as such viscera was preserved. The viscera was chemically examined and the report is annexed as annexure no. 10 to the affidavit, from which it transpires that it contained Organo Chloro insecticide and Ethyl Alcohol poison. Learned counsel for the applicant argued that in so far as the applicant is concerned, he is not named in the F.I.R., his implication has surfaced for the first time in the statement of co-accused persons and there is no recovery of any incriminating material either from pointing out or possession of the applicant. Learned counsel has placed para-30 of the affidavit filed in support of bail application and has argued that the applicant has no criminal history which reads as follows:-

"(30) That it is categorically submitted here that accused applicant is not having any criminal history in the record of police nor he is a previously convicted person in other words accused applicant is a man of clean antecedents and he is not indulged in any anti-social activities."

5. Per contra, learned brief holder for the State and learned counsel for the first informant vehemently opposed the prayer for bail. It is argued while placing the relevant transcript of C.C.T.V. footage that the applicant was also seen moving out from the place where the deceased and other co-accused persons were consuming liquor. The applicant was also seen together with the deceased having liquor by Dinesh, the younger brother of the deceased which is mentioned specifically in the First Information Report and in the statement of the first informant recorded under Section 161Cr.P.C. It is argued that all the accused persons in a clandestine manner gave poisonous substance to the deceased as a result of which he died, which also gets fortified from the report of chemical analyst from which poison has been found in the viscera.

6. Learned A.G.A. while refuting the averment of criminal antecedents of the applicant, has argued that the said averment is a false averment made in the affidavit filed in support of bail application. He has argued that the applicant is involved in seven other criminal cases and even history sheet has been opened. The details of involvement of the applicant in seven other criminal cases have been placed before the Court which are as follows:

(i) Case Crime No. 1072 of 2015, under Sections 147, 148, 149, 307, 332, 353, 334 I.P.C. and 336 Public Representative Act, P.S.- Narkhi, District Firozabad,

(ii) Case Crime No. 917 of 2017, under Sections 60 Excise Act and 420 I.P.C., P.S.- Narkhi, District Firozabad,

(iii) Case Crime No. 472 of 2018, under Sections 8/20 N.D.P.S. Act, P.S.- Narkhi, District Firozabad,

(iv) Case Crime No. 616 of 2018, under Sections 147, 148, 149, 307, 323, 324, 504, 506, 323 I.P.C., P.S. Narkhi, District Firozabad,

(v) Case Crime No. 651 of 2018, under Sections 147, 148, 149, 307, 323, 324, 504, 506, 326 I.P.C., P.s.- Narkhi, District Firozabad,

(vi) Case Crime No. 140 of 2020, under Section 2/3 Gangster Act, P.S. Fariha, District Firozabad and

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(vii) Case Crime No. 196 of 2020, under Sections 4/25 Arms Act, P.S.- Aitmadaula, District Agra.

7. After having heard learned counsels for the parties and perusing the records it is apparent that criminal antecedents of the applicant have not been disclosed. The affidavit in support of bail application is of no one else but Sauraj Singh, who claims himself to be the brother of the applicant. The C.C.T.V. as has been seen and a transcript has been drawn in the case diary is a piece of evidence which cannot be manufactured. The presence of the applicant at the place where the deceased was consuming liquor with the applicant and other co-accused persons shows conclusively they being last seen together. The report of Forensic Lab even shows that the viscera had Organo Chloro insecticide and Ethyl Alcohol poison.

8. Looking to the facts and circumstances of the case, the nature of evidence and gravity of offence and specially keeping in view of the fact that in the viscera report presence of Organo Chloro insecticide and Ethyl Alcohol poison was found and long criminal antecedents of the applicant, I do not think it to be a fit case to release the applicant on bail.

9. The bail application is rejected.

10. On the point of criminal history, this Court has perused the free copy of the order dated 24.9.2020 passed by the Additional Sessions Judge, Court No. 6, Firozabad in Bail Application No. 1403 of 2020, CNR No. UPFD03867-2020, Uday Pratap urf Dau vs. State of U.P. by which the bail application of the applicant has been rejected by the court below. The same is annexed as annexure no. 11 to the affidavit. The said order does not attend about the criminal history of the applicant. In the said order while mentioning the arguments as raised on behalf of the applicant, it has specifically been mentioned that the applicant is "not a previous convict." There is no discussion by the court about the said argument in the order rejecting bail of the applicant.

11. Not only in this case but in many other cases it is seen that there is

an averment made that the applicant/accused is not involved in any other criminal case before this Court. The order rejecting bail by the courts below is silent about the criminal antecedents of the applicant/accused but on the basis of instructions of learned Additional Government Advocate of this Court or on the basis of instruction of learned counsels for the first informant, it transpires that the applicant/accused has previous criminal history. When the learned counsels are countered with the same it becomes embarrassing for them and is also an impediment in deciding the said bail application due to the non-disclosure of the criminal history of the accused. Although the criminal antecedents of the accused are not the sole and decisive factor for decision of bail applications but the same needs to be considered while deciding an application for bail under Section 439 Cr.P.C. as per the legislative mandate of Section 437 Cr.P.C.

12. This Court directs the courts below in the State of Uttar Pradesh to attend the issue of criminal antecedent(s) of accused persons while deciding bail applications under Section 439 Cr.P.C. and give a complete detail of the criminal antecedent(s), if any, of the applicant(s)/accused before them or record the fact that there are no criminal antecedent(s) of the said person(s) if there are none.

13. The Registrar General of this Court is directed to communicate this order to all the District and Sessions Judges of the State, who shall ensure the immediate implementation of this order by the courts in their jurisdiction.

14. The Registrar General shall ensure compliance of this order in its true spirit and submit a report of compliance before this Court by 29.1.2021.

15. List this case on 29.1.2021 for further orders.

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

17. The computer generated copy of such order shall be self attested by

the counsel of the party concerned.

18. 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.

(Samit Gopal,J.)

Order Date :- 14.12.2020
Naresh