

**Court No. - 66**

**Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41714 of 2024**

**Applicant :-** Ram Sewak

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

**Counsel for Applicant :-** Manish Dev, Manish Kumar Singh

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

**Hon'ble Sameer Jain,J.**

1. Heard Sri Manish Dev, learned counsel for the applicant, Sri Deepak Singh, learned counsel for the informant and Sri Imran Khan, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 148 of 2024, under Sections 302, 394, 411 IPC, Police Station Sachendi, District Kanpur Nagar during pendency of the trial.

3. FIR of the present case was lodged against unknown persons with regard to murder of the younger brother of the informant.

4. Learned counsel for the applicant submitted that nobody was named in the FIR but during investigation through the statement of co-accused, applicant has been made accused in the present matter. He further submits, when the second statement of the informant was recorded then he disclosed the fact that actually after committing the loot her brother was murdered.

5. He next submits, as per prosecution, when co-accused Rohit was arrested then from his possession two mobile phones were recovered and IMEI number of one mobile phone was of deceased. He next submits, as per prosecution however co-accused Rohit stated, there was SIM of applicant in this mobile but admittedly SIM of applicant was not found in the mobile. It is further submitted, except the above evidence there is no other evidence against the applicant on record and on the basis of above evidence, it cannot be said that applicant was the person, who along with others after committing loot committed the murder of the deceased.

6. He further submits, applicant is not having any criminal history

and in the present matter he is in jail since 29.05.2024 i.e. for last more than seven and half months.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that it is a case in which after committing the loot deceased was brutally murdered and mobile phone of the deceased was also recovered from the possession of co-accused Rohit and in one mobile there was SIM of the deceased, therefore, it cannot be said that there is no evidence against the applicant on record but they could not dispute the fact that except the above recovery, there is no cogent evidence against the applicant on record. Learned AGA further could not dispute the fact that applicant is not having any criminal history.

8. I have heard learned counsel for the parties and perused the record of the case.

9. It is a case of circumstantial evidence and during investigation through the statement of co-accused applicant has been made accused in the present matter and however during investigation, as per prosecution, when co-accused Rohit was arrested then from his possession mobile phone of the deceased was recovered and in the mobile there was SIM of the applicant but admittedly no SIM of the applicant was recovered and except this there is no cogent evidence against the applicant on record and I find merit in the submission advanced by learned counsel for the applicant that merely on the basis of such evidence, at this stage, it is hard to believe that applicant was the person, who committed the murder of the deceased.

10. Further, applicant is not having any criminal history and in the present matter he is in jail since 29.05.2024 i.e. for last more than seven and half months.

11. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

12. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

13. Let the applicant - **Ram Sewak** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.
- (ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.
- (iii) The applicant shall not indulge in any criminal and anti-social activity.

14. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

15. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

**Order Date :- 16.1.2025**

AK Pandey