

## Mudit Srivastava vs State Of Up on 30 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:68278

Reserved on- 10.04.2025

Delivered on- 30.04.2025

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 939 of 2024

Applicant :- Mudit Srivastava

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhishek Kumar Srivastava, Neeja Srivastava

Counsel for Opposite Party :- Sharique Ahmed, Vishnu Murti Tripathi

Hon'ble Sameer Jain, J.

1. Heard Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Virendra Singh, learned counsel for the applicant, Sri V.M. Tripathi and Sri Sharique Ahmed, learned counsels for the informant and Sri R.N. Srivastava, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 206 of 2023, under Sections 302, 201 IPC, Police Station- Chakeri, District- Kanpur Nagar, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 15.03.2023 against applicant and his unknown associate at about 6:34 hours and according to FIR, on 13.03.2023 at about 3:00 p.m. son of the informant along with his wife and daughter went to drop her at her paternal home and thereafter, after informing his wife that he is going to the home of applicant, he had gone but when he did not return

till 9 p.m. then his wife and her sister arrived at the house of applicant and he informed them that son of the informant had already gone and he dropped him near Aharwa crossing and thereafter an information of missing was given to the police and after sometime informant received information about recovery of dead body of his son. It is further mentioned in the FIR that applicant along with his unknown associate due to money transaction committed his murder.

4. Learned counsel for the applicant submitted that, however, applicant is named in the FIR but it reflects, as some money transactions took place between applicant and deceased, therefore, he has been made accused in the present matter.

5. He further submitted that FIR of the present case was lodged on 15.03.2023 at about 6:34 hours but before lodging the FIR, a missing report was filed by his wife on 14.03.2023 at about 17:40 hours and from the statement of S.I. Vijay Darshan Sharma, it reflects that after missing report, dead body of the deceased was recovered and after recovery of the dead body, the same was identified by the informant and wife of the deceased.

6. He further submitted that even from the FIR, which was lodged on 15.03.2023, it reflects, dead body of the deceased had already been recovered but surprisingly when applicant was arrested on 15.03.2023 after the lodgment of FIR, then as per Investigating Officer, on his pointing out dead body was recovered and this fact clearly suggests that entire investigation is tainted one and recovery of the dead body allegedly on the pointing out of the applicant prima facie appears to be doubtful.

7. He further submitted that as per Investigating Officer, when applicant was arrested then he also confessed his guilt and stated that he had broken the mobile phone of the deceased and threw the same from over bridge but surprisingly part of alleged broken mobile phone was also recovered on his pointing out and again this fact casts serious doubt on the prosecution case as no reliance can be placed on such dramatic recovery.

8. He further submitted that, however, during investigation, cotton swab from the hands of the applicant was taken along with his pant (lower) and as per forensic lab report, on these items human blood was found but the alleged sample was collected after the alleged arrest of the applicant i.e. after two days from the alleged murder and therefore, it cannot be presumed that blood found on the cotton swab was of the deceased. He further submitted that there is no evidence on record, which can suggests that the alleged blood found on the cotton swab of the applicant was of the deceased.

9. He further submitted that, however, from the FIR, it reflects, when wife of the deceased and her sister arrived at the house of the applicant then applicant did not give them permission to enter in his house and from the house, some smoke was coming out but surprisingly, statement of wife of the deceased was recorded on 04.05.2023 i.e. after almost two months and similarly, statement of sister-in-law of the deceased i.e. sister of his wife was recorded on 19.05.2023.

10. He further submitted that as per prosecution, number of transactions were made from the account of the deceased to the account of applicant but fact of transaction has been admitted by the informant in the FIR itself and, therefore, merely on this basis, it cannot be said that due to money transaction, applicant committed the murder of the deceased, who was his friend.

11. He further submitted that it is a case of circumstantial evidence and only evidence against the applicant is the evidence of last seen as applicant was along with deceased on 13.03.2023 since evening but applicant had already informed to the wife of the deceased and her sister that he has already dropped the deceased at the crossing and this fact is even evident from the FIR and statements of the wife of deceased and her sister and, therefore, circumstance of last seen has been properly explained by applicant. He further submitted that except the evidence of last seen, there is no other cogent evidence against applicant on record, which can connect him with the instant crime.

12. He further submitted that applicant is not having any criminal history and in the present matter, he is in jail since 16.03.2023 i.e. for last more than two years.

13. Per contra, learned AGA as well as learned counsel for the informant vehemently opposed the prayer for bail and submitted that apart from the evidence of last seen, there is also evidence that on the pointing out of the applicant dead body of the deceased and his broken mobile phone were recovered, which is evident from the recovery memo.

14. They further submitted that from the report of Forensic Lab, it is evident that on the cotton swab of the applicant human blood was found.

15. They further submitted that huge transactions of money were made from the account of the deceased to the account of applicant.

16. Both the counsels however, could not dispute the fact that FIR of the present case was lodged on 15.03.2023 at 06:34 hours and before lodgement of the FIR, wife of the deceased on 14.03.2023 lodged a missing report of the deceased at the police station at 17:40 hours and as per the statement of S.I. Vijay Darshan Sharma, immediately after the missing report, dead body of the deceased was recovered from near the railway track and after information, he immediately informed the informant and wife of the deceased and after arrival at spot, they also identified the dead body.

17. They further could not dispute the fact that even from the FIR, it is evident that dead body of the deceased had already been recovered and applicant was arrested after the FIR on 15.03.2023.

18. They further could not dispute the fact that the alleged cotton swab of the applicant was taken after two days and there is no evidence that the blood, found on the cotton swab, was of the deceased.

19. They further could not dispute the fact that money transaction was going on between deceased and applicant as applicant, who was in air force, purchased a car for deceased in his name.

20. They further could not dispute the fact that it is a case of circumstantial evidence and applicant is in jail for last more than two years and he is not having any criminal history.

21. I have heard both the parties and perused the record of the case.

22. FIR of the present case was lodged on 15.03.2023 at 06:34 hours and according to FIR, on 13.03.2023 in the afternoon deceased had gone to meet the applicant and thereafter he did not return and subsequently his dead body was recovered.

23. From the recovery memo, however, it is reflected that after the FIR when applicant was arrested then on his pointing out dead body of the deceased was recovered on 15.05.2023 but from the FIR and statement of S.I. Vijay Darshan Sharma, it reflects that dead body of the deceased had already been recovered i.e. even before his arrest immediately after lodgement of the missing report dated 14.03.2023 by the wife of the deceased, therefore, prima facie the alleged recovery of dead body on the pointing out of the applicant appears to be doubtful.

24. Further, however, as per prosecution, when applicant was arrested then on his pointing out, broken mobile phone of the deceased was also recovered, which he threw from over bridge, but story of recovery does not appear to be convincing.

25. Further, as one part of recovery i.e. recovery of dead body on the alleged pointing out of the applicant has become doubtful, therefore, the second part of recovery i.e. recovery of alleged broken mobile phone of the deceased also becomes doubtful.

26. Further, however, from the record, it reflects that on the cotton swab of the applicant human blood was found but it could not be established that the alleged human blood was of the deceased. Further, the alleged cotton swab from the hands of the applicant was taken after two days.

27. Further, however, as per prosecution, number of the money transactions were made from the account of deceased to the account of the applicant and due to this money transaction, applicant committed his murder but it reflects that these transactions were being made since the year 2018 and therefore, merely on this basis, at this stage, it cannot be presumed that applicant committed the murder of the deceased, who was his friend.

28. Further, it is a case of circumstantial evidence and it appears, only cogent evidence against the applicant is the evidence of last seen as deceased went to meet him and applicant also admitted this fact but from the statement of the wife of the deceased and his sister-in-law i.e. sister of his wife recorded during investigation, it reflects that applicant informed them that he had already dropped the deceased at crossing and this fact is even evident from the missing report lodged by the wife of the deceased dated 14.03.2023, therefore, it reflects that the alleged circumstance of last seen has been duly explained by the applicant.

29. Further, law is settled, unless proven guilty, an accused is deemed to be innocent and bail application of an accused should not be dismissed for punitive purpose.

30. Further, applicant is not having any criminal history and in the present matter, he is in jail since 16.03.2023 i.e. for last more than two years.

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

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

33. Let the applicant- Mudit Srivastava 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.

34. 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.

35. 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 :- 30.4.2025 KK Patel