

Kuldeep Alias Prashant vs State Of U.P. on 1 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:45036

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3254 of 2025

Applicant :- Kuldeep Alias Prashant

Opposite Party :- State of U.P.

Counsel for Applicant :- Amit Rai,Gaurav Kakkar,Raghvendra Prakash,Sahibe Alam,Saqib Mee

Counsel for Opposite Party :- Parvez Alam,G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed by applicant is taken on record.
2. Heard Sri Gaurav Kakkar, learned counsel for the applicant, Sri Parvez Alam, learned counsel for the informant and Sri Pradeep Kumar, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 463 of 2024, under Sections 103(1), 309(4), 309(6), 317(2) & 3(5) BNS, Police Station- Noorpur, District- Bijnor, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 28.11.2024 at about 23:20 hours against applicant and one unknown person and according to FIR, on 27.11.2024 when informant reached home along with his mother then found that his father was lying dead in the bathroom and thereafter he informed the police and after the post-mortem and inquest, he came to know that murder of his father was committed by the applicant and his associate in the intervening night of 27/28.11.2024.

5. Learned counsel for the applicant submitted that however, applicant is named in the FIR but it reflects, nobody could see the real incident and merely on the basis of suspicion, he was named in the FIR.

6. He further submitted that FIR of the present case was lodged by the informant on 28.11.2024 at about 23:20 hours but before lodgement of the FIR, on 28.11.2024 at about 10:52 hours, he himself moved an application to the police that when he reached home along with his mother then he found the dead body of his father, which was lying in the bathroom, and in that application he did not raise any suspicion against the applicant and this fact clearly suggests that subsequently on the basis of false allegation, he lodged the FIR of the present case against applicant. He further submitted that application dated 28.11.2024 moved earlier to the FIR of the present case has been annexed along with G.D. entry at page nos. 23 and 24 of the supplementary affidavit filed in support of the instant bail application.

7. He further submitted that during investigation, on 29.11.2024 Investigating Officer recorded the statement of one Lalit, who was servant of the informant and deceased and he tried to give the evidence of last seen but his statement also does not appear to be convincing as he in his statement categorically stated that he disclosed the fact that he witnessed the applicant along with the deceased on the date of incident to the informant but this fact has not been disclosed by the informant either in the FIR or in the application moved by him earlier to the FIR of the present case and therefore, no reliance can be placed on the statement of the witness Lalit.

8. He further submitted that however, as per prosecution, when applicant was arrested then he confessed his guilt and from his possession only Rs. 5,50/- was recovered. It is further submitted, as per prosecution, applicant was arrested on 29.11.2024 at about 12:27 hours in the afternoon and within 40 minutes at about 13:05 hours on 29.11.2024, wife of the deceased i.e. mother of the informant moved an application that after committing the loot of jewelleryes and money, applicant committed the murder of her husband and thus she introduced new facts and thereafter as per prosecution, on the pointing out of the applicant, who was already in the custody, on 29.11.2024 at about 13:30 hours in the afternoon the jewelleryes were recovered from a bush. He further submitted that as per prosecution, on the pointing out of the applicant, mobile phone of the deceased and weapon used in the crime were also recovered.

9. He further submitted that from the recovery memo, which has been annexed at page no. 97 of the paper book, it could not be reflected that from which place the alleged mobile phone of the deceased and weapon used in the crime were recovered and even from the recovery memo, it reflects that the alleged jewelleryes were recovered from an open place, which was accessible to all. He further submitted that merely on the basis of above evidences, it cannot be said that applicant involved in the present crime.

10. He further submitted that except the above evidences, there is no cogent evidence against the applicant on record.

11. He further submitted that it is a case of circumstantial evidence and there is no evidence against the applicant on record, which can connect him with the instant crime.

12. He further submitted that applicant is not having any criminal history and he is in jail in the present matter since 29.11.2024.

13. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that on the pointing out of the applicant, not only mobile phone of the deceased was recovered but on his pointing out the alleged looted jewellerys were also recovered.

14. They further submitted that even on the pointing out of the applicant, weapon used in the crime was also recovered and there is also evidence of last seen against him but both the counsels could not dispute the fact that evidence of last seen was given by the witness Lalit, who was servant of the informant and as per his statement, he informed the informant about the fact that he witnessed the applicant along with the deceased on the date of incident but in spite of that informant did not disclose this fact either in the FIR or in the application moved earlier by him even before lodgement of the FIR.

15. They further could not dispute the fact that the recovery of alleged jewellerys was made from a bush, which was accessible to all and from the recovery memo, it could not be reflected that from which place the alleged recovery of mobile phone and weapon used in the crime was made. They further could not dispute the fact that applicant is not having any criminal history.

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

17. It is a case of circumstantial evidence and as per prosecution, following circumstances are against the applicant:-

(a) he was last seen along with the deceased on 28.11.2024 i.e. on the date of incident by the witness Lalit,

(b) when applicant was arrested then he confessed his guilt and on his pointing out, weapon used in the crime, mobile phone of the deceased and jewellerys, looted at the time of commission of crime, were recovered.

18. As far as evidence of last seen given by witness Lalit is concerned, from his statement, it reflects that he was servant of the informant side and from his statement, it also reflects, the fact that he witnessed the applicant along with deceased on the date of incident was disclosed by him to the informant but surprisingly this fact has not been disclosed by the informant either in the FIR or in the application, which was moved earlier by him even before lodgement of the FIR of the present case.

19. Further, as far as evidence with regard to recovery is concerned, from the recovery memo, it reflects that recovery was made from a place, which was accessible to all.

20. Further, from the recovery memo, it could not be reflected that from which place, the alleged recovery of mobile phone of the deceased and weapon used in the crime was made.

21. Further, except the above circumstances, there is no circumstance against the applicant.

22. After considering the facts and circumstances of the case, this Court finds merit in the argument advanced by learned counsel for the applicant that there is no cogent circumstance against the applicant, which can connect him with the instant crime.

23. Further, applicant is not having any criminal history and he is in jail in the present matter since 29.11.2024.

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

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

26. Let the applicant- Kuldeep Alias Prashant 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.

27. 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.

28. 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 :- 1.4.2025 KK Patel