

# **Azeez @ Gudda And Another vs State Of U.P. on 3 February, 2021**

**Author: Pradeep Kumar Srivastava**

**Bench: Pradeep Kumar Srivastava**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44759 of 2020

Applicant :- Azeez @ Gudda And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Kamlesh Kumar Dwivedi

Counsel for Opposite Party :- G.A., Abhishek Kumar, Anand Pati Tiwari

Hon'ble Pradeep Kumar Srivastava, J.

Learned counsel for the informant has got received copy of the counter affidavit to counsel for the applicant, which, he will be filing in the registry.

Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

This bail application has been given by the accused applicants Azeez @ Gudda and Sameem in Case Crime No. 219 of 2020, under Sections 363, 364A, 302, 201, 34, 120-B I.P.C., P.S.- Etmadpur, District Agra.

Learned counsel for the applicants has submitted that the accused applicants have been falsely implicated in this case. It is submitted that accused applicants are not named in the F.I.R. and the F.I.R. was lodged against one named accused Vahid. Subsequently, on the basis of suspicion accused

applicants were arrested and they were forced to make confessional statement. It has been stated that one country made pistol was recovered on the pointing out of accused applicant Sameem but it is clear that it has no connection with this offence. It is submitted that in this case nine years old child has been kidnapped and murdered and on the basis of only suspicion names of the accused applicants have come in light; there is also evidence of four witnesses, who have overheard the accused persons talking with each other in which they have referred to the alleged offence and they have stated their involvement in the commission of offence. It is submitted that case is based on circumstantial evidence and confessional statement. Further submission is that there is no criminal history of the accused applicants and charge-sheet has already been filed after police investigation and applicants are prepared to furnish sureties and bonds, therefore, there is no possibility of their either fleeing away from the judicial process or tampering with the evidence. Applicants are languishing in jail since 16.9.2020 and undertake that they will not misuse the liberty of bail, if granted and cooperate in trial.

Learned A.G.A. and learned counsel for the informant have vehemently opposed the prayer of bail and submitted that in this case nine years old child was kidnapped and murdered and post mortem report shows that murder of the said child was caused in a very brutal manner. However, he has not disputed the fact that case is based on circumstantial evidence and there is no direct or oral evidence in support of the F.I.R. version or prosecution version. Learned counsel for the informant also submitted that considering the brutality of the offence, bail application is liable to be rejected.

Having heard the submission of learned counsel of both sides, considering the fact that apparently case is based on circumstantial evidence and except the confessional statement there is no evidence against the accused applicants and the circumstances are yet to be established during trial, thus, without commenting on the merits of the case, I find it to be a fit case for bail.

Let applicants Azeez @ Gudda and Sameem be released on bail in aforesaid case crime on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/ court concerned, subject to following conditions:-

- (i) The applicants will co-operate with the trial and remain present personally on each and every date fixed for framing of charge, recording of evidence as well as recording of statement under Section 313 Cr.P.C. or through counsel on other dates and in case of absence without sufficient cause, it will be deemed that they are abusing the liberty of bail enabling the court concerned to take necessary action in accordance with the provisions of Section 82 Cr.P.C. or Sections 174A and 229A I.P.C.
- (ii) The applicants will not tamper with the prosecution evidence and will not delay the disposal of trial in any manner whatsoever.
- (iii) The applicants will not indulge in any unlawful activities.

The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicants to prison.

Order Date :- 3.2.2021 Dhirendra/