

Madhuri And 2 Others vs State Of U.P. on 24 November, 2022

Author: Manju Rani Chauhan

Bench: Manju Rani Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30579 of 2022

Applicant :- Madhuri And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Giri Ram Rawat, Indra Deo Mishra, Shri Ram (Rawat)

Counsel for Opposite Party :- G.A., Ramesh Chandra Yadav

Hon'ble Mrs. Manju Rani Chauhan, J.

The case is taken up in the revised call.

Heard Sri I. D. Mishra, learned counsel for the applicants, Sri Ramesh Chandra Yadav, learned counsel for the informant as well as Sri Amit Singh Chauhan, learned A.G.A. for the State and perused the record of the present bail application.

The present bail application has been filed by the applicants Madhuri, Runa and Maina with a prayer to enlarge them on bail in Case Crime No. 49 of 2022, under Sections 364-A, 302, 201, 203 I.P.C., Police Station-Rani Ki Sarai, District- Azamgarh, during pendency of trial.

The aforesaid case has been registered on the basis of an F.I.R. lodged on 11-02-2022 regarding the informant's son having gone missing while he was playing outside the house.

As per the prosecution case, the dead body of the child was recovered from a plastic bag kept on a loft in the house of the co-accused Ram Nivas on the pointing out of his son Manish, who is a co-accused in the case. During investigation the statement of a child aged about 9 years was recorded, who stated that he was playing with the deceased child when the co-accused Manish took him away by giving him an allurements of a toffy.

After investigation the police submitted a report under Section 173 Cr.P.C. wherein it is stated that the co-accused Manish had killed the kidnapped child Kunal for ransom and he had hidden the dead body in his house. The dead body was recovered in a plastic bag kept on a loft in the house of the co-accused Ram Nivas on the pointing out of the co-accused Manish.

Learned counsel for the applicants submits that applicants are family members of the deceased and have been falsely implicated in the present case. It is further submitted that co-accused Ram Nivas, Subedar and Devendra have already been granted bail by another Benches of this Court vide order dated 08.08.2022, 13.09.2022 and 02.11.2022 passed in Criminal Misc. Bail Application Nos. 20404 of 2022, 37419 of 2022 and 37212 of 2022 respectively. The applicants are also entitled for bail. It is next argued that the criminal history against the applicants under Section 174-A is subsequent to the present F.I.R. It is next argued that there is no possibility of fleeing away from the judicial process or tampering with the witnesses and in case, the applicants are enlarged on bail, they shall not misuse the liberty of bail and the applicants are languishing in jail since 02.06.2022. Accordingly, he requests for bail.

Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the bail prayer of the applicants by contending that the innocence of the applicants cannot be adjudged at pre trial stage, therefore, they do not deserve any indulgence. In case, the applicants are released on bail, they will again indulge in similar activities and will misuse the liberty of bail.

Considering the nature of the offence, material/evidence brought on record, complicity of the accused, severity of punishment, the submissions made by the learned counsel for the parties, the Court is of the view that the applicants have made out a case for bail. The bail application is allowed.

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

- (i) The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.
- (ii) The applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuses the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicants are deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against them in accordance with law.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merits of the case.

Order Date :- 24.11.2022 AKT