

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Miscellaneous III Bail Application No. 5709/2024

Surajbhan S/o Sh Laxminarayan @ Lichhiram, Aged About 30 Years, R/o Khet Me Dhani, Chak 08, H.H. Ward No.9, Daniramwala, P.s. Chunawadh, Tehsil And Distt. Srigangangar, Raj (Presently Lodged In Sri Ganganagar)

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent

For Petitioner(s) : Mr. Vineet Jain, Sr. Advocate
Mr. Rajiv Bishnoi
For Respondent(s) : Mr. Abhishek Purohit, AGA
Mr. Aakash Kumar

HON'BLE MR. JUSTICE FARJAND ALI**Order****10/07/2024**

1. The jurisdiction of this Court has been invoked by way of filing an application under Section 439 Cr.P.C. at the instance of accused-petitioner. The requisite details of the matter are tabulated herein below:

S.No.	Particulars of the Case	
1.	FIR Number	169/2023
2.	Concerned Police Station	Chunawadh
3.	District	Sri Ganganagar
4.	Offences alleged in the FIR	Under Sections 365, 143 of IPC
5.	Offences added, if any	Under Sections 302, 201, 364, 147, 148, 149, 323, 342, 120-B of IPC
6.	Date of passing of impugned order	15.04.2024



2. It is contended on behalf of the accused-petitioner that no case for the alleged offences is made out against him and his incarceration is not warranted. There are no factors at play in the case at hand that may work against grant of bail to the accused-petitioner and he has been made an accused based on conjectures and surmises.
3. Contrary to the submissions of learned counsel for the petitioner, learned Public Prosecutor opposes the bail application and submits that the present case is not fit for enlargement of accused on bail.
4. I have considered the submissions made by both the parties and have perused the material available on record.

There has been only one eye-witness to depose against the petitioner, but he has turned hostile and has not supported the story set out in the charge-sheet. In the charge-sheet, two other witnesses namely Om Prakash and Tarachand have been projected by prosecution to depose against the petitioner in respect of alleged extra judicial confession. It is the case of the prosecution, that the petitioner after committing the offence made a confession before these two witnesses namely Om Prakash and Tarachand.

The incident took place on 19.07.2023, however, the statements of these two witnesses got recorded by Police on 30.08.2023.

Inordinate delay in the recording of the statement during investigation, that too; of the witnesses whose



evidence may turn or flip the case of the prosecution, certainly casts a serious doubt over the credibility of the investigation, however, this Court would desist from giving any final opinion in this regard as the matter is still pending in the trial and any comment on the veracity of the statement or manner or investigation may influence interest of any of the party to the lis.

Ordinarily, as a rule of common prudence, a man who commits an offence would confess before a person with whom he is divinely or spiritually attached, or a person on whom he possess full confidence or trust or a person with whom he expects assistance or help or any other person having keen relation as a family member or a confession can be made to a priest, but in any wildest imagination, an accused shall not make confession before a person having connection with the opposite party.

There are serious aspersions that these two witnesses Om Prakash and Tarachand are tailor-made witnesses and are near relatives of the victim party and they have been made witness in this case only with a view to bolster the story of the prosecution or to make a strong case in favour of the prosecution. In the case of **State of Rajasthan Vs. Raja Ram, 2005 SCC**, the rule regarding extra judicial confession has elaborately been enunciated.

Delayed recording of important witnesses, that too of enemy witnesses persuading this Court to entertain the instant bail plea. The eye-witness has turned hostile. No





other witness is there to give any direct evidence regarding complicity of the petitioner in committing murder of the deceased.

There is high probability that the trial may take long time to conclude. In light of these facts and circumstances, it is deemed suitable to grant the benefit of bail to the petitioner in the present matter.

5. Accordingly, the instant bail application under Section 439 Cr.P.C. is allowed and it is ordered that the accused-petitioner as named in the cause title shall be enlarged on bail provided he furnishes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for his appearance before the court concerned on all the dates of hearing as and when called upon to do so.

(FARJAND ALI),J

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