

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 22473 of 2022

Applicant :- Mohan Tiwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Alok Kumar Dubey, Devaang Savla, Prabha Shanker Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Devaang Savla, learned counsel for the applicant, Sri Birendra Pratap Singh, learned AGA for the State and perused the material on record.

3. This is the second bail application under Section 439 of Code of Criminal Procedure filed by the applicant Mohan Tiwari, seeking enlargement on bail during trial in connection with Case Crime No. 107 of 2021, under Sections 302, 201/34 I.P.C. registered at P.S. Ali Nagar, District- Chandauli.

4. The first bail application of the applicant being Criminal Misc. Bail Application No. 30886 of 2021 was rejected vide order dated 02.09.2021.

5. Report of the trial court was summoned regarding status of the trial vide order dated 20.7.2023. The said report has been received which has been placed on record by the office. Perused the same.

5. Learned counsel for the applicant while placing Annexure No. S.A.-3 to the supplementary affidavit dated 13.7.2023, has argued that an identically placed co-accused Alok Trivedi has been granted bail by a co-ordinate Bench of this Court vide order dated 31.3.2023 passed in Criminal Misc. Bail Application No. 53894 of 2021 (Alok Trivedi vs. State of U.P.). It is argued that case of the applicant is identical to that of said co-accused. Learned counsel has placed para-27 of the affidavit and has argued that the applicant is not a previous convict. The applicant is in jail since 07.5.2021.

6. Per contra, learned State counsel opposed the prayer for bail but could not dispute the fact that after rejection of first bail application, co-accused Alok Trivedi has been granted bail by a co-ordinate Bench of this Court.

7. After having heard learned counsels for the parties and perusing the record, it is evident that the present bail application is the second bail of the applicant. The first bail application of the applicant was rejected by this Court. The said order is extracted herein below:-

"Heard Sri Nagendra Bahadur Singh holding brief of Sri Sudarshan Singh, learned counsel for the applicant, Sri Aacharya Rajesh Tripathi, learned counsel for the first informant, Sri Ankit Srivastava, learned counsel for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Mohan Tiwari seeking enlargement on bail during trial in connection with Case Crime No.107 of 2021, under Sections 302, 201/34 I.P.C., registered at Police Station Ali Nagar, District Chandauli.

Learned counsel for the applicant argued that although the applicant and co-accused Alok Trivedi have been named in the FIR which has been lodged by the wife of the deceased as the persons who had taken away the deceased on 22.04.2021 at about 1 p.m. from the house but they are not the accused named therein. The first informant has stated that the murder of her husband has been committed by Santosh Pandey and Rakesh Pandey who are named accused persons therein. The police has subsequently falsely implicated the applicant in the present case. Learned counsel has further placed before the Court S.A-1 to the supplementary affidavit and has argued that the deceased committed suicide and died as is evident from the supplementary C.D. No.1 dated 23.04.2021 wherein the police has stated to have recovered a suicide note from the pocket of the deceased and as per their version as noted in the said C.D was illegible but last line was legible wherein he has written that he is finishing his life on his own. The dead-body of the deceased was found in a car and the weapon of assault was also found on the front seat of the vehicle. Subsequently the police has without investigating the matter properly and investigating it against two named accused namely Santosh Pandey and Rakesh Pandey, implicated the applicant and Alok Trivedi in the present matter which is the handwork of the police and the same is without any credible evidence whatsoever. It is further argued that the version in the FIR is specific to the point that the wife of the deceased has stated that the murder of her husband has been done by Santosh Pandey and Rakesh Pandey due to some business dispute or dealings but the police has not investigated that aspect and has falsely implicated the applicant and Alok Trivedi in the present case. It has also been pointed out that the applicant is not having any criminal history as stated in para 14 of the affidavit and is in jail since 07.05.2021.

Per contra learned counsel for the first informant and learned A.G.A vehemently opposed the prayer for bail and argued that the applicant and co-accused Alok Trivedi were the persons who had taken the deceased from the house on 22.04.2021 at about 1 p.m. and subsequently the dead-body of the deceased was recovered and the postmortem was conducted wherein the doctor has opined the time since death as about two days and the postmortem was conducted on 24.04.2021 which concluded at 3 p.m., as such the time of taking away of the deceased by the applicant and co-accused Alok Trivedi and the time since death as noted in the postmortem report do correspond with each other and are some times near about. Initially on 24.04.2021, Alok Trivedi, the brother of the deceased and the applicant who is the nephew of the deceased were interrogated by the police and their statements have been recorded in supplementary C.D. No.2 but they were interrogated as a witnesses in the present case. Subsequently the second statement of Alok Trivedi was recorded which is annexure no.S.A-3 to the supplementary affidavit and then it transpired that Alok Trivedi and the applicant are involved in the present case after which the C.D.R was taken out of the accused persons and the investigating agency came to the conclusion that the same was indicative of the fact that the deceased and the applicant were together and their movement were together and later on, on 07.05.2021, the applicant and Alok Trivedi were made as an accused in the present case. The statements of the applicant and Alok Trivedi were recorded prior to 06.05.2021 when they were not accused persons. The case of the applicant and co-accused Alok Trivedi is of taking away the deceased from his house after which he was found dead and as such the implication of the applicant is there in the present case.

After hearing the counsel for the parties and perusing the record, it is apparent that the applicant and co-accused Alok Trivedi took the deceased from the house on 22.04.2021 at about 1 p.m. Later on, on 23.04.2021 the dead-body of the deceased was recovered which had gun-shot injury which was the cause of death. The postmortem was conducted on 24.04.2021 and the time since death was

opined to be two days which would be around 22.04.2021. There is no plausible explanation by the applicant and co-accused Alok Trivedi as to when and where they parted ways with the deceased.

Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is rejected.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

The computer generated copy of such order shall be self attested by the counsel of the party concerned.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing."

8. Co-accused Alok Trivedi has been granted bail subsequently by a co-ordinate Bench of this Court vide order dated 31.3.2023. The said order reads as under:-

"1. Heard Shri Anil Kumar Srivastava, learned Senior counsel assisted by Shri Utkarsh Srivastava and Learned AGA for State.

2. There is allegation in the FIR against two named accused persons, Santosh Pandey and Rakesh Pandey, of causing the murder of the husband of informant. It is alleged that the husband of the deceased left his house on 22.04.2021 along with the applicant who is his elder brother and Mohan Tiwari at about 1:00 hours. At 06:00 pm applicant and Mohan Tiwari came back and informed that her husband asked them to sit on a shop and went in his car stating that he will come back soon but he did not come back. When nothing was known about him, information was given to Lanka police station at about 11:00 pm. She came to know on 23.04.2021 that dead body of her husband was found lying in the back seat of a car. She stated that the named accused had made call on the phone of her husband and they had business relationship with him earlier and for last two years their relation had come to an end. She expressed apprehension that they had caused murder of her husband. Subsequently, the applicant has been implicated in this case on the basis of C.D.R location of his mobile phone at the place of incident on 22.04.2021.

3. Learned counsel for the applicant submits that it is a case of circumstantial evidence. The informant was earlier married to some other person from whom she had two children. Thereafter she had married the deceased but was having illicit relationship with co-accused, Mohan Tiwari. The applicant being elder step brother of the deceased was opposing her relationship with co-accused, Mohan Tiwari, and hence he has been falsely implicated in this case. In the FIR itself, it is mentioned that the applicant came back to the informant at 06:00 pm on 22.04.2021 and therefore his location in Bihar, i.e., the place of occurrence from 16:52 to 20:24 hours on the same day is not possible. There is only one gun shot injury found on the person of the deceased. It is not clear who was author of the aforesaid injury. It is a case of circumstantial evidence and the chain of circumstances are not complete.

4. Learned A.G.A has opposed the bail application of the applicant. He has submitted that there is credible evidence against the applicant and motive of the crime has been stated by the informant is dispute of the deceased with the applicant regarding a land.

5. After hearing the learned counsel for the parties, this Court finds that it is a case of circumstantial evidence. In the FIR there was no allegation against the applicant but subsequently allegations have been made against him. The applicant is in jail since 08.05.2021 and he was implicated in one case in one year 2012 wherein he has been acquitted in 2019. Later he has been implicated in one case under Gangsters Act.

6. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicants being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of *Satendra Kumar Antil vs. C.B.I.*, passed in S.L.P (Crl.) No. 5191 of 2021; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicants have made out a case for bail. The bail application is allowed.

7. Let the applicant, Alok Trivedi, involved in Case Crime No. 107 of 2021, under Sections- 302, 201/34 IPC, Police Station- Ali Nagar, District- Chandauli, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuses the liberty of bail during trial and in order to secure his 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 him in accordance with law under Section 174-A of the Indian Penal Code.

(v) The applicant 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 applicant is 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 him in accordance with law.

In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of one year from the date of production of certified copy of this order.

Registrar (compliance) is directed to communicate this order to the trial Court for necessary compliance within a week."

9. Looking to the facts and circumstances of the case, considering the case of the applicant to be at par with the that of co-accused Alok Trivedi and without expressing any opinion on the merits of the case, a case for bail is made out in favour of the applicant.

10. Let the applicant- Mohan Tiwari, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties **(out of which one surety should be the family member of the applicant and the other surety should be a local person)** each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(V) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is 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 him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

11. 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 applicant to prison.

12. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 23.11.2023

Naresh