

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12874 of 2022

Applicant :- Rubal Yadav@ Akash Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajeev Upadhyay, Gaurav Kakkar, Sanjay Singh, Santosh Kukmar Tiwari

Counsel for Opposite Party :- G.A., Atharva Dixit, Aushim Luthra

Hon'ble Siddharth, J.

List has been revised.

Heard Sri Gaurav Kakkar, learned counsel for the applicant; Sri Manish Tiwary, learned Senior Advocate, assisted by Sri Atharva Dixit, learned counsel for informant; learned AGA for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant, **Rubal Yadav@ Akash Yadav**, with a prayer to release him on bail in **Case Crime No. 561 of 2021, under Sections 302, 34 IPC, Police Station Kotwali, District- Shahjanhanpur**, during pendency of trial.

The following order has been passed by this Court on 13.2.2023:-

"Heard Sri Gaurav Kakkar, learned counsel for the applicant; Sri Manish Tiwary, learned Senior Counsel, assisted by Sri Atharva Dixit, learned counsel for informant and learned AGA for State.

There is allegation against the applicant that on 23.10.2021 at about 9.00 p.m. information was received by the informant from Dinesh Verma that he and younger brother of the informant, Manish Kapoor, had gone to eat and drink at Omni Hotel where the applicant and co-accused Mohabbat Ali, entered into dispute with Manish and Dinesh Verma. Staff of hotel Omni tried to settle the dispute but in the meantime co-accused, Mohabbat Ali, exhorted the applicant and he fired upon, Manish, by his country made pistol and he fell down. Thereafter the applicant and co-accused, Mohabbat Ali, eloped on their scooty. The deceased was taken to the Doctor and he subsequently died.

Learned counsel for the applicant has submitted that the inquest on the dead body of the deceased started at 00.37 hours and concluded 2.30 hours. First information report was surprisingly lodged by the informant on 2.28 hours. He has submitted that the presence of the informant is noted in the inquest report and he also claims that he lodged the first information report. There is only difference of two minutes in conclusion of inquest proceedings and the lodging of first information report. First information report was lodged two minutes prior to the conclusion of inquest proceedings. The second submission

is that 10 grams of pastry food material was present in the intestine of the deceased as per post mortem report, when he consumed food at about 9.00 p.m. The post mortem was conducted at 4.10. a.m. on the next date i.e 24.10.2021. He has submitted that if the food was taken at 9.00 p.m. on 23.10.2021 at 4.00 a.m. in the morning it will get digested.

He has further pointed out to the site plan prepared by the investigating officer wherein at place F-1, it is alleged that the accused made firing in the air. Dead body of the deceased was recovered at place F-2, which was 20 steps from place F-1. He has pointed out to the statement of Dinesh Verma, that who claims to be eye witness on the basis of whose information the first information report was lodged. It has been stated by Dinesh Verma, that the deceased and the applicant and co-accused entered into quarrel inside the hotel. The applicant and co-accused were under the influence of liquor and were misbehaving with the deceased, Manish. When Manish protested against their conduct he made a fire in the air. Thereafter, the applicant and co-accused, Mohabbat Ali, sat on the scooty and were going but the deceased ran after them and got hold of the scooty from behind. Thereafter co-accused exhorted the applicant and he made firing on the deceased, Manish. The applicant and co-accused vanished from the scene of incident. He has submitted that the deceased himself was aggressor and he chased the accused persons 20 steps from the place F-1 to F-2, where it is alleged that he was shot dead. From the place F-2 no blood stains were found on the place of incident. It was a market place and number of CCTV cameras were installed in the shop but no footage of CCTV camera were recovered. The statements of the hotel owner of Omni Hotel and staff was not recorded at all, when the incident started from there. He has finally submitted that the applicant is in jail since 24.10.2021 and he has no motive to commit the alleged offence and has no criminal history as per best of his knowledge. He has finally submitted that the incident had taken place all of sudden without their being any prior preparation or motive. At the most it is a case under Section 304 (Part-II) I.P.C.

Learned Senior Advocate appearing on the behalf of the informant has vehemently opposed the bail application. He has submitted that there is specific role assigned to the applicant by Dinesh Verma in his statement. The applicant along with co-accused was arrested within five hours of the incident and country made pistol was recovered from the applicant. The applicant and co-accused are deliberately delaying the trial by moving application under Section 311 Cr.P.C. He has submitted that the information of the incident was given at police station at 23.50 hours and inquest proceedings started 00.37 hours and it was concluded on 2.30 hours. The proceedings for lodging first information report started soon after information given at police station and the first information report was recorded at 02.28 hours. Police Station is 2 km., away from the place of incident. He has submitted that the case should have been registered under Section 304 Part, II I.P.C is not correct.

Learned counsel for the informant has placed before this court the

order dated 13.12.2022 of the trial court which shows that 30.12.2022 was fixed for cross-examination of PW-1, Ravi Kapoor, but the learned counsel for the applicant did not cross-examine him and therefore, the opportunity of cross examination PW-1 was closed. Thereafter the application was filed on 13.12.2022 on behalf of applicant praying that the witness, PW-1, may be recalled for cross examination again.

Therefore, it is clear that before the trial court accused side is not making serious effort to get the trial concluded.

List this case after six months again on 8th August, 2023.

The trial court is expected to conclude the trial by that date and send status report regarding the status of trial on or before the date next date fixed."

After passing the aforesaid order, report was called from the trial court, which has been received, which shows that five prosecution witnesses have been examined and examination-in-chief of PW-6 has also been recorded. FSL report regarding the weapon used in the crime has not been received, as a result of which, cross-examination of PW-6 cannot be concluded.

Learned counsel for the applicant has submitted that there are 30 prosecution witnesses in the charge-sheet. The trial will take time to conclude. Even otherwise, the case appears to be a sudden provocation and will not travel beyond Section 304-II IPC. The applicant has been falsely implicated in this case. He has criminal history of eight cases to his credit explained in rejoinder affidavit and is languishing in jail since 24.10.2021. In case, the applicant is released on bail, he will not misuse the liberty of bail.

Learned counsel for the informant has vehemently opposed the prayer for bail of the applicant and has submitted that the trial is on the verge of conclusion. There is no justification to enlarge the applicant on bail at this stage.

Per contra learned A.G.A. has also opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

After hearing rival contentions, this Court finds that evidence of prosecution has yet not been concluded. Thereafter statement under Section 313 Cr.P.C. and defence evidence shall be recorded.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant; keeping in view uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy; 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. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022 and considering 5-6 times overcrowding in jails over and above their capacity by under trials** and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime 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 with the following conditions that :-

(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 misuse 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 and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

The court below is directed to conclude the trial against the applicant, as expeditiously as possible, preferably within a period of three months.

The Registrar (Compliance) of this Court is directed to communicate this order to the court concerned within 10 days.

Order Date :- 8.11.2023
Ruchi Agrahari