

Neutral Citation No. - 2023:AHC:211007

Reserved On:- 30.10.2023

Delivered On:-02.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12067 of 2023

Applicant :- Ratan Yadav @ Ambuj Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Karunesh Pratap Singh

Counsel for Opposite Party :- G.A., Santosh Kumar Mishra, Rajesh Kumar
Dubay

Hon'ble Siddharth, J.

1. This is the second bail application. The first bail application of applicant was rejected by this Court vide order dated 17.02.2023.

Heard Sri Karunesh Pratap Singh, learned counsel for the applicant; Sri Santosh Kumar Mishra and Sri Rajesh Kumar Dubay, learned counsel for informant as well as the learned AGA for the State and perused the material placed on record.

2. The instant bail application has been filed on behalf of the applicant, **Ratan Yadav @ Ambuj Yadav**, with a prayer to release him on bail in **Case Crime No. 261 of 2020, under Sections 147, 323, 352, 148, 307, 302, 325 and 120-B IPC, Police Station – Barhaj, District- Deoria**, during pendency of trial.

3. Learned counsel for the applicant has submitted that the first bail application of the applicant was rejected on the basis of wrong facts. The correct facts are:-

a. Cross cases have been lodged. Both sides have received injuries.

b. General allegations of assault have been levelled against 6 named accused (Indradev, Yogendra, Ratan, Piyush, Rakesh, Mahesh Chaudhary). They are alleged to have caused assault the informant with lathi-danda and sharp edged weapons to Anup Kumar Mishra (Deceased), injured Tameshwar Mishra, Abhishek and Smt. Pratibha Devi.

c. Statement of informant/Smt Pratibha Devi has. been recorded on 29.10.2020 and she has repeated the version of F.I.R. U/s 161 of Cr.P.C.

d. All injured were examined on 29/30.10.2020, including the deceased and none had received single injury of sharp edged weapon and all injuries was caused by hard and blunt object.

e. Injury examination of deceased on 29.10.2020 showed the following injuries:-

I. Contused Swelling involving Rt. Eye of size 5*3 c.m. Advised X-Ray Face, NCCT Head for Expert Opinion.

II. Abraded Swelling 3*2 c.m. on the Rt. Side forehead, 1 c.m. above the left of Rt. eyebrow. Advised. NCCT Head for expert opinion.

III. Abraded contusion. On the Rt. side forehead 2 c.m. above injury no. 2.

Opinion: all the injuries caused by Hard and Blunt object fresh Duration, Nature Ascertain: Adv. NCCT Head, X-Ray for expert opinion.

f. Statement of all injured were recorded on 30.10.2020 and all have assigned general role of assault to 4 named accused (Indradev, Yogendra, Ratan, Piyush) with Lathi Danda and sharp edge weapon (Hasiya and Farsa).

g. After 8 days of incident the statement of Eye witness, Sunil Kumar, dated 06.11.2020 was recorded and he has assigned the role of assault of "Farsa" to the applicant over the deceased. However, deceased has not received a single injury of sharp edge weapon.

h. The bail of Co-accused Rakesh Yadav and Mahesh Chaudhary was allowed By this Hon'ble Court.

i. During Trail P.W.1 (informant/Smt Pratibha) has Specifically stated in her examination that the Applicant Ratan Yadav has assaulted to deceased by "Farsa" from the side of Sharp edge, when the deceased has not received a single injury of sharp edge weapon.

j. That the deceased was intervener in present case and there was no motive for accused persons, to kill him. It is a case covered U/s 304 I.P.C. not under section 302 I.P.C.

4. In support of his contentions, learned counsel for applicant has further submitted that there is no doubt that recovery of farsa was made from the applicant, but the alleged injuries cannot be caused by farsa.

5. Learned A.G.A. and learned counsel for informant have vehemently opposed the prayer for bail of the applicant and they have submitted that the deceased suffered three injuries noted above.

6. Such injuries can be caused by farsa. They have relied upon the judgment of Apex Court in the case of Satya Pal, Applicant Vs. State of U.P. Opposite Party, 1999 CRI. L. J. 3709 Allahabad High Court and submitted that fresh arguments in on same facts which were available in earlier bail application cannot be allowed.

7. Learned counsel for applicant has rejoined and has submitted that apart from above arguments, there are 25 prosecution witnesses detailed in the charge-sheet. Only two all of them have been examined till date.

8. Keeping in view, the progress of the trial, trial will take considerable time to conclude since there are 21 prosecution witnesses to be examined.

9. After hearing the rival contentions, this Court finds that while rejecting the first bail application this Court recoded the findings that role of causing injury by sharp edged weapons has been assigned to the applicant which corresponds to the injury on the body of the deceased, but it appears that the injuries on the body of the deceased noted hereinabove have not been caused by sharp edged weapon. It cannot be denied that trial will take much time to conclude. There is also a cross case and four prosecution witnesses of fact have already been examined. The applicant is languishing in jail since 05.11.2020.

10. Regarding long incarceration of under trials prisoners in jail due to delay in conclusion of trial, the Hon'ble Apex Court in re: *Union of India vs. K.A. Najeeb reported in AIR 2021 Supreme Court 712* has held in Para 16 of the judgment being reproduced herein below as follows :-

"This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."

11. 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 the 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 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. & 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.

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

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

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

15. Registrar(Compliance) is directed to communicate this order to the concerned court below within ten days.

Order Date :- 02.11.2023

Abhishek