

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 18199 of 2021

Applicant :- Ramasare Kushwaha

Opposite Party :- State of U.P.

Counsel for Applicant :- Maiku Lal Maurya, Anoop Kumar Sharma, Kamlesh Kumar Tripathi, Niraj Tripathi, Sanjay Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Kamlesh Kumar Tripathi, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Ramasare Kushwaha, seeking his enlargement on bail in Case Crime No. 620 of 2020, under Sections 452, 302 IPC, Police Station-Kotwali Nagar Mahoba, District-Mahoba during the pendency of trial i.e. Sessions Trial No. 102 of 2021 (State Vs. Ramasare Kushwaha and Others), under Sections 452, 302 IPC, Police Station-Kotwali Nagar Mahoba, District-Mahoba now pending in the Court of Sessions Judge, Mahoba.

4. Record shows that in respect of an incident, which is alleged to have occurred on 16.11.2020, a delayed FIR dated 17.11.2020 was lodged by first informant-Kailash Kushwaha (son of deceased) and was registered as Case Crime No. 620 of 2020, under Sections 147, 148, 149, 452, 302, 34 IPC, Police Station-Kotwali Nagar Mahoba, District-Mahoba. In the aforesaid FIR, 6 persons namely - (1) Ramasare (applicant herein), (2) Vishwanath, (3) Mohanlal, (4) Brijlal, (5) Gayaprasad and (6) Veeru have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused armed with iron-rod and other articles entered the house of the first informant and thereafter, assaulted the father of first informant on account of which, he died.

6. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The inquest (*Panchayatnama*) of the body of deceased was conducted on 17.11.2020. In the opinion of witnesses of inquest (*Panch witnesses*), the nature of death of deceased was categorized as

homicidal and the cause of death of deceased was said to be injuries sustained by the deceased prior to his death. Subsequent to above, the post mortem of the body of deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of the deceased was shock and hemorrhage due to ante-mortem head injuries. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. Contused swelling 13 cm x 9 cm on Rt. side of occipital region of skull 4 cm below Rt. ear colour of section large hemotoma present below skin and on brain large bleed present on Rt. front of cerebellar part of brain on enter lying fractured.

2. Contusion 4 cm x 3 cm just above the lat. side of left eye brow reddened colour on."

7. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of applicant alone is established in the crime in question. He, accordingly, submitted the charge sheet dated 16.02.2021 whereby applicant alone has been charge sheeted under Sections 452, 302 IPC whereas the other named accused have been exculpated.

8. After submission of aforementioned charge sheet, the trial commenced and was registered as Sessions Trial No. 102 of 2021 (State Vs. Ramasare Kushwaha and Others), under Sections 452, 302 IPC, Police Station-Kotwali Nagar Mahoba, District-Mahoba. Up to this stage, 5 prosecution witnesses of fact i.e. PW-1 Kailash Kushwaha, PW-2 Neeraj Kushwaha, PW-3 Sambhu, PW-4 Smt. Janki and PW-5 Dr. Yogendra Singh have been examined. PW-1 i.e. first informant alleges to be an eye witness of the occurrence and has supported the FIR. Learned counsel for applicant, thereafter, invited the attention of Court to the statement in chief of aforesaid witnesses (PW-1), which is on record as Annexure S.A.-1 to the supplementary affidavit filed by the learned counsel for applicant. This witnesses in his statement in chief before court below has clearly stated that he did not witness the assault upon his father. As such, this witness is not an eye witness of the occurrence. On the above premise, the learned counsel for applicant contends that applicant is liable to be enlarged on bail.

9. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 19.11.2020. As such, he has

undergone more than 3 years of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. Though the trial is of the year, 2021 and in view of the fact that a period of almost 2 years has rolled by only 5 prosecution witnesses of fact have been examined up to this stage. Since the entire evidence sought to be relied upon by the prosecution stand crystallized, therefore, there does not exist any justification to prolong the custodial arrest of applicant during the pendency of trial particularly when the first informant who is an eye witness of the occurrence has not supported the FIR. To buttress his submission, he has referred to the judgment of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5). On the above premise, he submits that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that though the trial is of the year, 2021 and in view of the fact that a period of almost 2 years has rolled by but only 5 prosecution witnesses of fact have been examined up to this stage, since the entire evidence sought to be relied upon by the prosecution stand crystallized, therefore, there does not exist any justification to prolong the custodial arrest of applicant during the pendency of trial inasmuch as, PW-1 i.e. first informant alleges to be an eye witness of the occurrence but this witnesses in his statement in chief before court below has clearly stated that he did not witness the assault upon his father, as such, this witness is not an eye witness of the occurrence, the clean antecedents of applicant, the period of incarceration undergone, the police report in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite of

above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the judgment of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

12. Accordingly, the bail application is **allowed**.

13. Let the **applicant-Ramasare Kushwaha**, be released on bail in the aforesaid case crime number 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 which are being imposed in the interest of justice:-

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE 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.

(ii) THE APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER 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/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) 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 THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

14. However, it is made clear that any wilful violation of above

conditions by the applicant, shall have serious repercussion on his bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 4.12.2023

Vinay