

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15880 of 2023

Applicant :- Aditya Tiwari @ Ramji Tiwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Ved Byas Mishra

Counsel for Opposite Party :- G.A.,Bishram Tiwari

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ved Byas Mishra, the learned counsel for applicant, the learned A.G.A. for State. Mr. Bishram Tiwari, Advocate has put in appearance on behalf of first-informant. Despite notice having been served upon the learned counsel for first-informant, neither he nor anyone on his behalf is present to oppose this application for bail. The information slip given by the learned counsel for applicant to the learned counsel for first-informant is taken on record.

2. This application for bail has been filed by applicant **Aditya Tiwari @ Ramji Tiwari** seeking his enlargement on bail in Case Crime No. 0176 of 2022, under Sections 302, 201, 34 I.P.C. Police Station-Bhaluani, District-Deoria during the pendency of trial.

3. Record shows that in respect of an incident which is alleged to have been occurred on 14.02.2022, a delayed F.I.R. dated 15.02.2022 was lodged by first-informant Anand Prashad Singh (uncle of the deceased) and was registered as Case Crime No. 0176 of 2022, under Sections 302, 201, 34 I.P.C. Police Station-Bhaluani, District-Deoria. In the aforesaid F.I.R. some unknown persons have been arraigned as accused.

4. At the very outset, learned counsel for applicant submits that after completion of statutory investigation of aforesaid case crime number, Investigating Officer submitted the charge sheet dated 02.02.2023, whereby and whereunder the applicant alongwith Satish Mishra have been charge sheeted under Sections 302, 201, 34 I.P.C. Charge sheeted co-accused Satish Mishra has already been granted bail vide order dated 28.08.2023 passed in Criminal Misc. Bail Application No. 36087 of 2023 (Satish Mishra Vs. State of U.P.). For ready reference the same is reproduced herein under:

"1. Heard Sri Dileep Kumar Srivastava, learned counsel for the applicant, Sri Bhupendra Kumar Tiwari, learned Advocate, holding brief of Sri Bishram Tiwari, learned counsel for the informant and Sri Rajeev Dhar Dwivedi, learned AGA, for the State.

2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.176 of 2022, under Sections 302,201 and 34 IPC, Police Station Bhalunai, District Deoria during pendency of the trial.

3. FIR of the present case was lodged against unknown persons with regard to murder of the nephew of the informant.

4. Learned counsel for the applicant submits that nobody was named in the FIR and when first statement of the informant was recorded under Section 161 Cr.P.C.then also he did not disclose anything but when his second statement was recorded during investigation then he stated that some persons informed him that deceased was last seen along with applicant and co-accused Ramji Tiwari and thereafter when the statements of cousin brother and uncle of the deceased were recorded then they stated that they witnessed the deceased along with applicant and co-accused Ramji Tiwari and, therefore, on the basis of last seen evidence applicant has been made accused in the present matter

5. He further submits that admittedly cousin brother and uncle of the deceased are the close relatives of the deceased and informant and if they would have witnessed the applicant along with the deceased and co-accused then this fact would have definitely be mentioned in the FIR and in the first statement of the informant.

6. He further submits that even in the second statement of the informant, he did not state that cousin brother and uncle of the deceased informed the fact that the deceased was last seen along with applicant and other co-accused persons.

7. He further submits that during investigation according to the Investigating Officer location of applicant was found along with co-accused Ramji Tiwari near the place of incident and applicant and co-accused also made conversation with each other but merely on this basis at this stage it cannot be said that applicant participated in the alleged crime.

8. He further submits that applicant is not having any previous criminal history and he is in jail in the present matter since 12.1.2023.

9. Per contra learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that there is evidence of last seen against the applicant and as per CDR , applicant made conversation with co-accused Ramji Tiwari on the date of incident and location of both the accused were also found near the place of incident, therefore, both these facts clearly indicate that applicant and co-accused Ramji Tiwari after committing murder of the deceased threw his dead body.

10. I have heard learned counsel for the parties and perused the record of

the case.

11. It is a case of circumstantial evidence and no one was named in the FIR and during investigation in the second statement of the informant recorded under Section 161 Cr.P.C. the names of applicant and co-accused Ramji Tiwari were revealed and according to the informant, some persons informed him that applicant and co-accused Ramji Tiwari both were last seen along with the deceased and after recording the second statement of the informant, the statement of cousin brother and uncle of the deceased were recorded and they have also stated the same fact which was disclosed by the informant in his second statement during investigation.

12. I find force in the argument advanced by the learned counsel for the informant that if the cousin brother and uncle of the deceased would have witnessed the applicant and co-accused Ramji Tiwari along with the deceased then earlier why they did not disclose this fact to the informant.

13. Further, from the record it reflects that as per the CDR applicant and co-accused Ramji Tiwari made conversation with each other on the date of incident and their location was also found near the place of incident but merely on this basis at this stage in my view too, it cannot be said that applicant committed the murder of the deceased and except these two evidence, it appears that there is no other evidence against the applicant on record.

14. Even the motive assigned to the applicant appears to be vague and does not appear to be convincing.

15. Applicant is not having any previous criminal history and in the present matter he is in jail since January,2023.

16. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

17. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

18. Let the applicant-Satish Mishra be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

19. In case of breach of any of the above condition, the prosecution will be

at liberty to move an application before this Court for cancellation of the bail of the applicant.

20. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial."

5. Learned counsel for applicant submits that the case of the applicant is similar and identical to that of co-accused who has already been enlarged on bail. There is no such distinguishing feature on the basis of which the case of the present applicant could be so distinguished from charge sheeted co-accused so as to deny him bail. He, therefore, contends that in view of above and for the facts and reasons recorded in the bail order of co-accused Satish Mishra, applicant is also liable to be enlarged on bail on the ground of parity.

6. It is next contended that no conviction can be maintained simply on the basis of last seen evident. To buttress his submission, he has relied upon to the following judgment of the Supreme Court in the case of **Jabir Vs. The State of Uttarkhand 2023 SCC Online SC 1732**. The applicant has criminal history of three cases, however, the same has been sufficiently explained in para 11 of the affidavit filed in support of the bail order. Referring to the judgment of the Supreme Court in the case of **Brijmani Devi Vs. Pappu Kumar and Another (2022) 4 SCC 497**, it is urged by learned counsel for applicant that merely on the ground of criminal history an accused cannot be denied bail. Applicant is in jail since 12.01.2023, as such he has undergone more than nine and a half months of incarceration. 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 the applicant stands crystallized. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He, therefore, submits that applicant is liable to be enlarged on bail. In case, applicant is enlarged on bail he shall not misuse the liberty of bail and shall co-operate with the trial.

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

8. Having heard the learned counsel for applicant, the learned

A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, complicity of accused and accusation made coupled with the fact that the present case is a case of circumstantial evidence, therefore, there is no eye-witness of the occurrence, complicity of an accused in a case based upon circumstantial evidence has to be inferred in accordance with parameters laid down by Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra 1984 AIR 1622**, however, upto this stage none of the parameters laid down in aforesaid judgment are satisfied against applicant, there is no recovery from the applicant, no strong motive has emerged against the applicant to commit the crime in question from the material collected by the Investigating Officer, upto this stage, no animus can be inferred against the applicant to commit the crime in question, the solitary incriminating circumstance that has emerged against the applicant is that of last seen and similarly situate circumstanced co-accused Satish Mishra has already been enlarged on bail, by virtue of the law laid down by the Apex Court in the case of **Jabir Vs. The State of Uttarkhand 2023 SCC Online SC 1732**, no conviction cannot be maintained simply on the basis of evidence of last seen, the explained criminal history of the applicant, the judgment of the Supreme Court in the case of **Brijmani Devi Vs. Pappu Kumar and Another (Supra)**, the period of incarceration undergone, the charge sheet having been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised, yet inspite 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, 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.

9. Accordingly, the bail application is **Allowed**.

10. Let the applicant-**Aditya Tiwari @ Ramji Tiwari**, be released on bail in 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.

11. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on bail so granted by this Court and the trial court will be at liberty to cancel the bail, after recording the reasons for doing so, in the given case with reference to any of the conditions mentioned above.

Order Date :- 28.10.2023

Imtiyaz