

Neutral Citation No. - 2023:AHC:237174

Reserved on: 06.12.2023

Delivered on: 14.12.2023

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41898 of 2020

Applicant :- Amit

Opposite Party :- State of U.P.

Counsel for Applicant :- Vatsala,Ravi Kant

Counsel for Opposite Party :- G.A.,Sundeep Shukla

Hon'ble Rajeev Misra,J.

1. Heard Mrs. Vatsala, the learned counsel for applicant, the learned A.G.A. for State and Mr. Sandeep Shukla, the learned counsel representing first informant.
2. Learned counsel for applicant has placed before the Court, the certified copies of the statements of the witnesses examined by court below up to this stage i.e. PW-1 Sanjay Kumar, PW-2 Suman, PW-3 Anjali and PW-4 Harpal. The same are taken on record.
3. Perused the record.
4. This application for bail has been filed by applicant-Amit seeking his enlargement on bail in Case Crime No. 977 of 2018, under Sections 147, 148, 504, 506, 307/149, 324/149 IPC, Police Station-Kankar Kheda, District-Meerut during the pendency of trial.
5. Record shows that in respect of an incident, which is alleged to have occurred on 08.08.2018, a prompt FIR dated 18.08.2018 was lodged by first informant-Sanjay Kumar (son of deceased Ratan Singh) and was registered as Case Crime No. 977 of 2018, under Sections 147, 148, 149,

302, 307, 34, 504 IPC, Police Station-Kankar Kheda, District-Meerut. In the aforesaid FIR, 5 persons namely (1) Sanjeev, (2) Amit, (3) Jaivind, (4) Malti and (5) Shivam have been nominated as named accused whereas the sisters of Shivam and Sanjeev have also been arraigned as accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that named accused armed with Shovel (Fawda) and Farsa (a sharpened heavy weapon) came to the shop of the first informant. They exhorted and thereafter assaulted Ratan Singh on account of which, he died on the spot whereas Suman (Bhabhi of first informant) and Anjali (niece of first informant) sustained grievous injuries.

7. 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 18.08.2018. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as homicidal and the cause of death was specified as cut injury sustained by the deceased on his neck caused by Shovel (Fawda). Thereafter, the post mortem of the body of deceased was conducted on 19.08.2018. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased is Shock and Haemorrhage as a result of ante-mortem injuries. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

“1. I.W. 9 cm x 1.5 cm skull deep Int. at the occipital bone 7 cm at or left ear.

2. I.W. 10 cm x 1 cm bone deep Int. the tip of right shoulder joint.

3. I.W. 9 cm x 7 cm bone deep Int. right side of mid of neck.

4. I.W. 12 cm x 4 cm bone deep Int. left side of mid of neck.

5. I.W. 8 cm x 1 cm muscles deep Int. interial aspect of left upper arm.

6. I.W. 4 cm x 1 cm muscles deep Int. lower abdomen 6 cm lateral

combines at of.

7. Bone of Index finger is removed but attached to skin of right hand.”

8. The injured Sanjeev was given medical treatment on account of the injuries alleged to have sustained by him in the occurrence giving rise to present criminal proceedings. As per the Medico Legal Report of aforesaid injured, the clinical summary as opined by the Doctor is as under:-

“Clinical Summary: Pt came to SUB P Hospital as a referred case from P.L.Sharma Hospital alleged n/o sustained injury over head, Right arm left leg due to phssically assault. Pt. was examined admitted evaluated investigated and managed conservatively by IV Bluads, antibiotics, analgester, antacids enter conevlants, immetic divaerties on NCCT head Pt. was found to have minimal S.A.H. in parictal region for that Nerosurgical evalua of opinion was adnormed to accompanying policeman. Pt is now being discharged on request of Police adverse to follow up in Nerosurgically deptt, at police Hospital as Danger signs due explained.”

9. During course of investigation, Investigating Officer examined first informant and the following witnesses under Section 161 Cr.P.C.:-

(i). Sanjay Kumar (First Informant),

(ii). Koyal Sharma,

(iii). Vinod Kumar,

(iv). Satish,

(v). Ramveer,

(vi). Rampal,

(vii). Smt. Suman,

(viii). Km. Anjali,

(ix). Harpal Singh.

10. On the basis of above and other material collected by him, during course of investigation, he came to the conclusion that the complicity of 7

persons is established in the crime in question. He, accordingly, submitted the charge sheet dated 19.11.2018 whereby the following persons namely Sanjeev, Amit, Jaivind Sharma, Malti, Shivam @ Shubham, Shobha Sharma and Monu Sharma have been charge sheeted under Sections 147, 148, 149, 307, 302, 324, 504, 506/34 IPC .

11. At the very outset, the learned counsel representing first informant submits that the bail application of charge sheeted co-accused has already been rejected vide order dated 22.01.2019. The same is reproduced hereinunder:-

(i). Criminal Misc. Bail Application No. 1928 of 2019 (Jaivinder Sharma Vs. State of U.P.) decided on 22.01.2019.

“Two supplementary affidavits filed by learned counsel for applicant which are taken on record.

Heard learned counsel for applicant, learned A.G.A. and perused the record.

Learned counsel for applicant contends that applicant has been falsely implicated; that as per averments made in FIR dated 18.08.2018 lodged by Sanjay Kumar, co-accused Sanjeev and Amit came at the shop of his brother Vinod at about 06:00 p.m. and demanded various articles on credit and upon refusal by his Bhabhi Suman and niece Anjali, co-accused Sanjeev and Amit left with threatening and returned with other co-accused persons armed with spade, farsa etc. and committed marpeet with them resulting in multiple injuries to his father Ratan Singh, Bhabhi Suman and niece Anjali and death of Ratan Singh due to injuries; that it is also mentioned in FIR that several villagers also arrived who caught Sanjeev at the spot and handed him over to police; that in FIR no specific role has been assigned to applicant; that postmortem report of deceased states that he sustained one lacerated wound and six incised wounds as well as removal of bone of an index finger; that injury nos.3 and 4 are incised wounds on neck which appears to be cause of death; that in statements under Section 161 Cr.P.C. first informant as well as injured witnesses Smt. Suman and Km. Anjali have specified the role of causing incised wounds with spade and farsa to Sanjeev and Amit, and applicant and Shubham have been assigned with the role of causing injuries with dandas while Smt. Malti Sharma and Meenu Sharma have been assigned with the role of causing injuries with kicks and fists; that in the incident in question, accused Sanjeev also sustained

multiple injuries as per medical report at Annexure 7; that co-accused Malti has been granted bail by other Bench of this Court vide order dated 24.10.2018 passed in Criminal Misc. Bail Application No. 39571 of 2018 and after releasing of bail, she has moved an application under Section 156(3) Cr.P.C. narrating the correct facts of the incident wherein deceased under intoxication of liquor was abusing Sanjeev and Amit who had gone to his shop and during quarrel his son came with spade and attempted on life of Sanjeev with the stump of spade; that above application under Section 156(3) Cr.P.C. moved after released on bail by Malti Sharma dated 26.11.2018 is pending for disposal; that applicant has no criminal history; that applicant undertakes that he will not misuse the liberty of bail; that the applicant is in custody since 18.08.2018.

Learned A.G.A. vehemently opposed the prayer of bail and contended that in this broad daylight incident of 06:00 p.m. on 18.08.2018, applicant is named in promptly lodged FIR within one hour of the incident; that in the incident, apart from causing injuries by Sanjeev and Amit with spade and farsa, applicant has also actively participated by causing head injury to deceased with dandas resulting in fracture of his occipital bone; that death of deceased has been opined due to shock & hemorrhage as a result of antemortem injuries, and Ratan Singh died due to cumulative effect of injuries caused to him by applicant and co-accused persons; that injuries to Sanjeev might have been sustained to him by crowd which caught him at the spot and handed him over to police; that injuries of Sanjeev are simple and superficial in nature for which he was discharged the very next day; that upon being denied articles on credit, all the accused persons formed unlawful assembly and committed the incident in pre-planned manner in furtherance of common object of such unlawful assembly in which applicant also actively participated; that a false cross version is being attempted through application under Section 156(3) Cr.P.C. which is not acceptable; that case of applicant is distinguishable from Malti Sharma who was a lady applicant may not seek parity with her part particularly when she has been differently assigned with the role of causing injuries with kicks and fists;

Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment, as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I do not find it a fit case for bail.

The bail application of applicant Jaivinder Sharma in Case Crime No. 977 of 2018 under Sections 147, 148, 149, 302, 307, 324, 504, 506, 34 I.P.C., P.S. Kankarkheda

District Meerut, is rejected accordingly.”

(ii). Criminal Misc. Bail Application No. 15926 of 2020 (Jaivindra Sharma Vs. State of U.P.) decided on 17.01.2023.

“1. Supplementary affidavit filed today by learned counsel for the applicant is taken on record.

2. Heard Sri Vinay Saran, learned Senior Counsel assisted by Sri Pradeep Kumar Mishra, learned counsel for the applicant as well as Sri Vibhav Anand Singh, learned A.G.A. for the State and perused the material placed on record.

3. This is the second bail application moved on behalf of the applicant with a prayed to release him on bail in Case Crime No. 977 of 2018, U/S 147, 148, 149, 324, 307, 302, 504, 506 of IPC, Police Station Kankarkhera, District Meerut, during the pendency of trial. His first bail application was rejected by Hon'ble Mr. (Retd.) Justice Harsh Kumar vide order dated 22.01.2019 passed in Criminal Misc. Bail Application No.1928 of 2019.

4. Learned Senior Counsel for the applicant has stated that the co-accused Shivam @ Shubham has been enlarged on bail by another Bench of this Court vide order dated 5.3.2020 passed in Criminal Misc. Bail Application No.45808 of 2019 and the applicant is also entitled for the same on the ground of parity. Learned Senior Counsel has fairly conceded the fact that three witnesses have been examined who have reiterated the allegations levelled in the FIR. However, he could not put forth any new evidence or new ground for granting bail to the applicant except the ground of long incarceration of the applicant i.e. since 18.08.2018.

5. Per contra, learned A.G.A. has vehemently opposed the bail prayer of the applicant by stating that on the point of long incarceration, learned AGA has stated that the maximum punishment for the offence u/s 302 IPC is of life imprisonment. Learned AGA has also stated that the case of the applicant is distinguishable to the case of co-accused Shivam @ Shubham and, therefore, he is not entitled for bail.

6. Having considered the rival submissions advanced by the learned counsel for the parties and also considering the fact that three witnesses have been examined, this Court is not inclined to release the applicant on bail at this stage as no new ground for bail could be indicated by the counsel for applicant.

7. In view of the above, the bail application is dismissed.

8. However, the learned Trial Court is directed to proceed with the trial and reach at

the logical conclusion expeditiously, unless there is no legal impediment, if possible, within a period of one year from the date of production of a certified copy of this order.

9. 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.”

(iii). Criminal Misc. Bail Application No. 39571 of 2018 (Smt. Malti Vs. State of U.P.) decided on 24.10.2018.

“Heard Sri Gaurav Kakkar, learned counsel for the applicant, Sri Sanjay Kumar Srivastava, learned counsel for the informant and the learned A.G.A. for the State and perused the record.

The present bail application has been filed by the applicant-Smt. Malti in Case Crime No.977 of 2018, under Sections 147, 148, 149, 302, 307, 504, 506, 34 I.P.C., Police Station Kankarkheda, District-Meerut with the prayer to enlarge her on bail.

The submission of the learned counsel for the applicant is that the applicant is a Pardanashin lady and it is stated in the F.I.R. that she along with five other family members barged into the house of first informant and other co-accused assaulted the deceased by pharsa, axe, etc. However, it is stated that the applicant had beaten the inmates of the house who had come for the rescue of the deceased by kicks and fists. The case of the applicant is distinguishable from that of co-accused against whom specific role of causing injuries to the deceased has been assigned. There is no early prospect of conclusion of trial. So, the applicant, who is in jail since 18.8.2018, having no criminal history to her credit, deserves to be released on bail.

Per contra, learned AGA as well as learned counsel for the informant vehemently opposed the prayer for grant of bail to the applicant but could not point out anything material to the contrary.

Considering the facts and circumstances of the case as also the submissions advanced by learned counsel for the parties, without expressing any opinion on merits of the case, I am of the view that the applicant is entitled to be released on bail.

Let applicant-Smt. Malti be released on bail in the aforesaid case crime number on her furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court concerned subject to following conditions that:-

1.The applicant shall not tamper with the prosecution evidence;

2.The applicant shall not pressurize the prosecution witnesses;

3.The applicant shall appear on the date fixed by the trial court.

In case of default of any of the conditions enumerated above, the courts below shall be at liberty to cancel bail of the applicant.

It is made clear that the applicant is being granted bail on the ground that she is a lady and also insignificant role of beating the witnesses has been attributed to her.”

(iv). Criminal Misc. Bail Application No. 45808 of 2019 (Shivam @ Shubham Vs. State of U.P.) decided on 05.03.2020.

“Heard learned counsel for the applicant and learned A.G.A. for the State.

1. Submission is that the applicant has been falsely implicated in this case. He was juvenile on the date of incident but after inquiry under rule 12 of the Juvenile Justice Care and Protection Act, the board has declared the applicant juvenile but directed him to be treated as adult. Nothing incriminating has been recovered from the applicant. Recovery has been made from co-accuseds, Sanjiv, Amit and Jaibindra. The applicant is in jail since 23.12.2018 and has no criminal history to his credit.

On the other hand learned AGA has opposed the prayer for bail but could not dispute the above submissions.

Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, submissions of the learned counsel for the parties noted herein above, larger mandate of the Article 21 of the Constitution of India and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant, Shivam @ shubham, involved in Case Crime No.977 of 2018, under Sections 147, 148, 149, 324, 307, 302, 504, 506 IPC, Police Station Kankarkhera, District- Meerut 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 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, the complainant is free to move an application for cancellation of bail before this court.”

12. Learned counsel for applicant contends that irrespective of the fact of that though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. As per the material collected by the Investigating Officer including the statements of the witnesses examined under Section 161 Cr.P.C., accused-applicant Amit is said to be armed with Farsa whereas accused Sanjeev is said to be armed with Fawda (Shovel). Out of the witnesses examined by the Investigating Officer under Sections 161 Cr.P.C., 4 witnesses namely first informant-Sanjeev, Suman, Anjali and Harpal have been nominated as accused. Sanjeev is the author of fatal injury sustained by deceased. Three out of the aforesaid Four witnesses of inquest namely Suman, Anjali and Harpal are witnesses of occurrence and as per the inquest report, the cause of death of deceased was specified as the injury sustained by the deceased on his neck and caused by a shovel (Fawda). She, therefore, submits that the case of

present applicant is clearly distinguishable from named/charge sheeted co-accused Sanjeev who admittedly was armed with Shovel (Fawda).

13. 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 25.08.2018. As such, he has undergone more than 5 years and 3 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 applicant stands crystallized. Up to this stage, no such circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, she 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.

14. Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The bail applications of co-accused Jaivinder Sharma has already been rejected. As per the material on record, there is nothing on record to distinguish the case of present applicant with aforementioned co-accused whose bail application has already been rejected by this Court. It is then contended that criminality committed by the named/charge sheeted co-accused is joint and common, therefore, same is incapable of separation or segregation. As such, no exception can be carved out in respect of the present applicant. The charge sheeted accused formed an unlawful assembly and with a common object committed the crime giving rise to present criminal proceedings. The observations made by a co-ordinate bench of this Court are clearly against the present applicant. There is nothing on record to show that the said observations are perverse and therefore, liable to be ignored.

15. According to the learned counsel for first informant, the trial has

already commenced by way of Sessions Trial No. 286 2019 (State Vs. Sanjeev and others, under Sections 147, 148, 149, 302, 307, 34, 504, 506 IPC. Up to this stage, four prosecution witnesses of fact have been examined namely PW-1 Sanjay Kumar, PW-2 Suman, PW-3 Anjali and PW-4 Harpal. As per the statements of aforesaid witnesses, the complicity of present applicant is also established in the crime in question. Furthermore, once the statements have been recorded and even though, this Court is a Superior Court yet dictates of prudence require that even if the bail Court is a Superior Court, it must refrain itself from commenting upon the nature of evidence that has emerged during the course of trial as any observation made by the Superior Court may effect the prosecution or the defence. On the above premise, the learned counsel representing first informant vehemently contends that no good or sufficient ground has been made out to enlarge the applicant on bail. As such, the bail application is liable to be rejected by this Court.

16. When confronted with above, the learned counsel for applicant could not overcome the same.

17. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, complicity of accused, accusations made coupled with the fact that since the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the present application for bail could not be dislodged by the learned counsel for applicant with reference to the record, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comment on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

18. As a result, present application for bail fails and is liable to be rejected.

19. It is accordingly **rejected**.

Order Date :- 14.12.2023

Vinay