

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30476 of 2023

Applicant :- Yatendra Pal

Opposite Party :- State of U.P.

Counsel for Applicant :- Rahul Saxena

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Rahul Saxena, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Yatendra Pal seeking his enlargement on bail in Case Crime No. 54 of 2023, under section 302 IPC, Police Station- Bisalpur, District Pilibhit during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 1.2.2023, a prompt F.I.R. dated 2.2.2023 was lodged by first informant Vinod Kumar and was registered as Case Crime No.54 of 2023, under section 302 IPC, Police Station- Bisalpur, District Pilibhit. In the aforesaid F.I.R., two persons namely, Bade @ Itendra and Majhle @ Virendra have been nominated as named accused.

After aforesaid F.I.R. 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 deceased was conducted. In the opinion of the witness 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 deceased. Thereafter post mortem of the body of deceased was conducted. In the opinion of autopsy surgeon, who conducted autopsy of the body of deceased, opined that the cause of death of deceased was shock and hemorrhage due to ante-mortem injuries. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

"Present on Rt. Side of neck of Rt. eye to maxilla underneath in Lt side of head Lt ear extending to row of frontal bone in Lt. side of forehead and in front of Lt. ear just below left eyebrow present on left side of ace bone deep on left side of mouth angle of joined, in left side wrist joint medial Lt. side base of left thumb in present on medial left hand 6 x 1 cm present on left high lateral aspect 16 cm above knee joint. 1 cm, present on it side of upper part of chest."

During course of investigation, Investigating Officer examined the first informant and other witnesses under section 161 CR.P.C. Investigating Officer recovered the mobile clipping of occurrence, on the basis of which complicity of named accused was said to be established in the crime in question.

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 is also established in the crime in question. He, accordingly submitted the charge sheet dated 4.5.2023, whereby all the named accused have been charge sheeted under section 302 IPC.

Learned counsel for applicant contends that present case is a case of circumstantial evidence, therefore there is no eye witness of the occurrence, the complicity of an accused in a case based upon circumstantial evidence has to be inferred in accordance with the parameters laid down by Apex Court in **Sharad Birdhichand Sarda, Vs. State of Maharashtra, AIR 1984 Supreme Court 1622**. However, upto this stage, none of the parameters laid down in aforesaid judgement are satisfied against applicant. It is then contended that complicity of applicant in the crime in question is sought to be established on the basis of video clip produced by first informant before the Investigating Officer. However, with reference to page 46 of the paper book, learned counsel for applicant submits that the said videography, which has been transferred to pen drive has not been made part of the case diary. Therefore no reliance can be placed upon the said document up to this stage. No certificate, under section 65 B of the Evidence Act has been furnished by the person from whom the video was transferred to pen drive. The said issue cannot be looked into at this stage. Referring to the statement of co-accused, it is contended that the author of the fatal injuries sustained by the deceased is co-accused Virendra. As such, the case of present applicant is distinguishable from aforesaid co-accused.

Even otherwise applicant is a man of clean antecedents having no criminal history to his credit, except the present one. Applicant is in jail since 3.4.2023. As such, he has undergone six months of incarceration. The police report in terms of Section 173(2) Cr.P.C. i.e. charge-sheet has already been submitted, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the course of trial. He, therefore 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.

Per contra, the learned A.G.A. for State 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. Criminality committed by named accused is joint and common, therefore same is incapable of separation and segregation. As such, no exception can be carved out in the case of present

applicant. Therefore no sympathy be shown by this Court in favour of applicant. However, he could not dislodge the factual and legal submissions urged by learned counsel for applicant, with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact present case is a case of circumstantial evidence, therefore there is no eye witness of the occurrence, the complicity of an accused is a case based on circumstantial evidence has to be inferred in accordance with of the parameters laid down by Apex Court in **Sharad Birdhichand Sarda (Supra)**, however, upto this stage, none of the parameters laid down in aforesaid judgement are satisfied against applicant, videography, which has been transferred to pen drive has not been made part of the case diary, no certificate under section 65 B of the Evidence Act has been furnished, by the person from whom the video was transferred to pen drive, the clean antecedents of applicant, 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 remains crystalized yet 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, as per the confessional statement of co-accused the author of the fatal injury sustained by the deceased is co-accused Majhle @ Virendra himself, but without making any comment on the merits of the case, the applicant has made out a case for bail.

Accordingly the bail application is **allowed**.

Let the applicant **Yatendra Pal** be released on bail in the aforesaid case crime number on 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her 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 :- 13.10.2023

Arshad