

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30209 of 2023

Applicant :- Yashpal Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Noor Muhammad, Yogesh Kumar Srivastava

Counsel for Opposite Party :- G.A., Satendra Singh

Hon'ble Rajeev Misra, J.

1. Heard Mr. Noor Muhammad, the learned counsel for applicant-Yashpal Yadav, the learned A.G.A. for State and Mr. Satendra Singh, the learned counsel representing first informant.

2. Perused the record.

3. Instant bail application has been filed by applicant-Yashpal Yadav seeking his enlargement on bail in Case Crime No.918 of 2022 under Section 302 I.P.C., Police Station-Shikohabad, District-Firozabad, during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 12.11.2022, a prompt F.I.R. dated 22.11.2022, was lodged by first informant-Anil Kumar @ Bhole (brother of the deceased) and was registered as Case Crime No.918 of 2022 under Section 302 I.P.C., Police Station-Shikohabad, District-Firozabad,. In the aforesaid F. I.R., an unknown person has been arraigned as solitary accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that some unknown persons caused death of the brother of first informant namely Sunil (deceased) in his house. The

discovery of death was made after the lock of the door of the house of the deceased was opened by the first informant namely Anil Kumar @ Bhole

6. After aforementioned F.I.R. was registered, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. Thereafter, inquest (panchayatnama) of the body of deceased was conducted on 19.09.2022. In the opinion of the witnesses of inquest (panch witnesses), the nature of death of deceased was categorised as homicidal and the cause of death of deceased was said to be ante mortem injuries sustained by the deceased. It is apposite to mentioned here that Veerbhan is one of the Panch witness. Subsequent to above, the post-mortem of the body of the deceased was conducted. The Doctor, who conducted the autopsy of the body of deceased opined that the cause of death of deceased is shock and haemorrhage as a result of ante mortem injury. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

i. Incised wound over right side and contusion of 4 x 2 cm.

ii. Incised wound (10x1) cm right posterior aspect.

iii. Incised wound left irregual region (5x2)

iv. Abrasion left posterior blow (4 x 2) cm.

v. Abrasion right shoulder (4x7) cm.

7. Complicity of applicant Yashpal Yadav and Hazari Prasad emderged in the statement of witness Veer Bhan, who was examined under Section 161 Cr.P.C.. Subsequently, applicant Yashpal Yadav and Hazari Prasad were arrested. No recovery was either made on the pointing of co-accused Hazari Prasad or from

his person. However, on the pointing of applicant-Yashpal Yadav, the recovery of Mobile Phone of deceased was made.

8. On the basis of above and other material collected by Investigating Officer during the course of investigation, he came to the conclusion that complicity of applicant Yashpal Yadav and co-accused Hazari Prasad is fully established in the crime in question. He accordingly submitted the charge sheet dated 24.12.2022 whereby applicant Yashpal Yadav and co-accused Hazari Prasad have been charge sheeted under Section 302 I.P.C.

9. It is then contended that after submission of aforementioned charge sheet, cognizance was taken upon same by the concerned Magistrate. Since the offence complained of is exclusively triable by the court of sessions, resultantly, concerned Magistrate committed the case to the Court of Sessions. As a consequence of above, Sessions Case No.487 of 2023 (State Vs. Yashpal and others) under Section 302 and 120B I.P.C. came to be registered. On date two prosecution witnesses of fact i.e. P.W.-1 Anil Kumar @ Bhole (first informant) and P.W.-2 Veer Bhan (eye witness of the occurrence) have been examined upto thi state.

10. At the very outset, the learned counsel for applicant submits that co-accused Hazari Prasad has already been enlarged on bail by this Court vide order dated 01.06.2023 passed in Criminal Misc. Bail Application No.12190 of 2023 (Hazari Prasad Vs. State of U.P.). For ready reference the order dated 01.06.2023 is reproduced herein-under:

"वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र, आवेदक हजारी प्रसाद की ओर से मु० अ० सं० 918 सन 2022, अन्तर्गत धारा 302, 120-बी भा०दं०वि०, थाना शिकोहाबाद, जिला फिरोजाबाद में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

परिवादी की ओर से सर्वश्री राम मोहन एवं हरीश चन्द्र दुबे विद्वान अधिवक्तागण ने वकालतनामा दाखिल किया, इसे पत्रावली पर रखा जाय।

आवेदक के विद्वान अधिवक्ता, परिवादी के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि आवेदक को इस प्रकरण में गलत एवं फर्जी तरीके से झूठा फँसाया गया है, उसने कथित अपराध कारित नहीं किया है, घटना की प्रथम सूचना रिपोर्ट अज्ञात में लिखायी गयी है आवेदक नामजद अभियुक्त नहीं है, आवेदक को सह अभियुक्त के बयान के आधार पर मुलजिम बनाया गया है. आवेदक का कोई पूर्व आपराधिक इतिहास नहीं है, चश्मदीद साक्षी वीरभान द्वारा विवेचक को दिए गए बयान में आया है कि हजारी ने सुनील यादव की चाकू से गर्दन काट दी थी और चाकू आस पास ही पड़े हुए थे, उसे यशपाल व हजारी ने धमकी दी थी कि अगर किसी से कुछ कहा तो तेरा भी यही हाल करें, उसे डर लग रहा था, जिसके कारण उसने घटना के बारे में किसी को कुछ नहीं बताया था बाद में घटना के बारे में मृतक के भाई अनिल व इन्दल सिंह को बताया था, आवेदक निर्दोष है तथा वह इस प्रकरण में दि० 22-12-2022 से कारागार में निरुद्ध है, इसलिए आवेदक को जमानत पर छोड़ दिया जाय ।

परिवादी के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता ने आवेदक के जमानत का प्रबल विरोध करते हुए तर्क प्रस्तुत किया कि आवेदक / अभियुक्त द्वारा कारित अपराध संज्ञेय एवं गम्भीर प्रकृति का है, इसलिए आवेदक को जमानत पर न छोड़ा जाय।

आवेदक के विद्वान अधिवक्ता के तर्कों के परिप्रेक्ष्य में पत्रावली पर उपलब्ध सारवान तथ्यों एवं परिस्थितियों का समग्र रूप से अवलोकन करने के बाद, सबूतों की प्रकृति और किसी भी ठोस विरोधात्मक सामग्री की अनुपस्थिति एवं उपलब्ध सामग्री से छेड़छाड़ की संभावना न होने के तथ्य को देखते हुए मेरी राय में आवेदक को जमानत पर मुक्त करने का उपयुक्त आधार है।

अतः वाद के गुण दोष पर बिना कोई टिप्पणी किए हुए आवेदक को उपरोक्त वर्णित अपराध में संबंधित न्यायालय की सन्तुष्टि पर व्यक्तिगत बंध-पत्र एवं अधिक धनराशि के दो स्थानीय प्रतिभू प्रस्तुत करने पर निम्नलिखित शर्तों के साथ जमानत पर छोड़ दिया जाय।

1-आवेदक विवेचना या परीक्षण के दौरान अभियोजन साक्ष्यों के साथ छेड़छाड़ नहीं करेगा।

2- आवेदक अभियोजन साक्षियों व पीड़ित / शिकायतकर्ता को डरायेगा / धमकायेगा नहीं ।

3- आवेदक न्यायालय के आदेशों का पालन करेगा, वह परीक्षण के दौरान बिना कोई अनावश्यक स्थगन लिए नियत तिथि पर न्यायालय में उपस्थित होगा तथा परीक्षण में ईमानदारी से सहयोग करेगा।

4- आवेदक जमानत पर रिहा होने के बाद जमानत की स्वतंत्रता का दुरुपयोग नहीं करेगा और किसी भी अपराधिक गतिविधि में लिप्त नहीं होगा न कोई अपराधिक कृत्य करेगा।

5- आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से मामले के तथ्यों से परिचित किसी भी व्यक्ति या पुलिस अधिकारियों को कोई प्रलोभन या धमकी नहीं देगा न ही उनसे कोई वायदा करेगा, जिसके कारण उन्हें न्यायालय में तथ्यों को उजागर करने से विरत रहना पड़े।

उपरोक्त शर्तों में से किसी के उल्लंघन के मामले में, परीक्षण न्यायालय आवेदक की जमानत नियमानुसार रद्द करने को स्वतंत्र है।"

11. On the above premise, the learned counsel for applicant contends that the case of present applicant is similar and identical to that of co-accused Hazari Prasad who has already been enlarged on bail. He also contends that there is no such distinguishing feature on the basis of which case of present applicant can be so distinguished from the aforesaid bailed out co-accused so as to deny him bail. On the above premise, the learned counsel for applicant contends that in view of above and for the facts and reasons recorded in the bail order of co-accused Hazari Prasad, applicant is also liable to be enlarged on bail on the ground of parity.

12. It is then contended that initially the present case was a case of circumstantial evidence but has now got converted into a case of direct evidence. On account of testimony of P.W.-2 Veer Bhan, who alleges to be an eye witness of the occurrence. The credibility and reliability of P.W.-2, Veer Bhan has been seriously doubted by the learned counsel for applicant. He contends that P.W.-2 Veer Bhan is the witness of inquest. He was present at the time of inquest proceeding but did not disclose the complicity of applicant Yashpal Yadav and Hazari Prasad in the crime in question. It is then contended that P.W.-2 Veer Bhan accompanied the first informant to the concerned police station at the time of lodging the F.I.R. which is clearly depicted from his deposition before court below as is apparent from the recital contained at page 29 of the supplementary affidavit filed by the learned counsel for applicant in

Court today. However, upto this stage no disclosure was made by this witness to the first informant that applicant Yashpal Yadav and Hazari Prasad have committed the crime in question. The complicity of applicant Yashpal Yadav and co-accused Hazari Prasad has emerged in the crime in question for the first time in the statement of Veer Bhan, which is a clear after thought. On the above premise, he submits that no adverse inference can be drawn against applicant on the basis of the statement of P.W.-2.

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 custody since 03.12.2023. As such he has undergone approximately nine and a half months of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has been submitted, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He therefore contends 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. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicant is a charge-sheet accused, therefore he does not deserve any indulgence by this Court. Upto this stage two prosecution witnesses have been examined with their complicity of applicant in the crime in question stands clearly established. Moreover, the case of present applicant is distinguishable from that of co-accused Hazari Prasad, who has already been granted bail on the ground that recovery of Mobile Phone of the deceased has been made from present

applicant whereas no recovery was made from co-accused Hazari Prasad. As such, the case of present applicant is clearly distinguishable from bailed out co-accused Hazari Prasad. They therefore submit that no sympathy be shown by this Court in favour of applicant. On the cumulative strength of above, they submit that present application for bail is liable to be rejected by this Court.

15. When confronted with above, the learned counsel for applicant rejoined his previous submission. He further submits that the recovery is false. The same is implanted. There is no independent witness of recovery. As such, the same cannot be relied upon. Moreover, the recovery of Mobile Phone of the deceased from the applicant is by itself not such an incriminating circumstance so as to infer the guilt of the applicant in the crime in question.

16. Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon consideration of evidence on record, accusations made as well as complicity of applicant coupled with the fact that co-accused Hazari Prasad has already been enlarged on bail, as per deposition of P.W.-2 Veer Bhan, who alleges to be an eye witness of the occurrence, role assigned to applicant Yashpal and Veer Bhan is joint and common, initially the case was one of the circumstantial evidence but now converted into a case of direct evidence, on account of deposition of P.W.-2 Veer Bhan who alleges to be an eye witness of the occurrence, the credibility and reliability of the alleged eye witness Veer Bhan has been doubted by the learned counsel for applicant, with reference to the fact that he is also a witness of inquest proceedings (punch witness) but no disclosure was made by him regarding complicity of applicant and co-accused Hazari Prasad in the crime in question is established at

the time of inquest proceedings, this witness accompanied the first informant to the police station, however, no disclosure was made by him to the first informant at that time regarding complicity of applicant and co accused Hazari Prasad in the crime in question, therefore, credibility and reliability of the P.W.-2 an eye witness of the occurrence is prima facie doubtful upto this stage, clean antecedents of the 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 stand crystallized, yet in spite of above the learned AG.A. and the learned counsel for first informant could not point out any such circumstance from the record necessitating the custodial arrest of the applicant during the pendency of trial, the judgement of Apex 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. and the learned counsel for first informant in opposition to the present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

17. Accordingly, present application for bail is **allowed**.

18. Let the applicant-**Yashpal Yadav** involved in aforesaid case crime number be released on bail 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) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner

whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

19. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison

Order Date :- 19.10.2023

YK