

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30292 of 2023

Applicant :- Anuj Rai

Opposite Party :- State of U.P.

Counsel for Applicant :- Pankaj Roy, Adarsh Kumar

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32261 of 2023

Applicant :- Deepak Verma

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Arvind Kumar Maurya, Om Prakash Verma

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34910 of 2023

Applicant :- Sanjay Yadav @ Gatar Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Kumar Yadav, Rajesh Kumar Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35268 of 2023

Applicant :- Naveen Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajeet Kumar Singh

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36775 of 2023

Applicant :- Anish Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Anurag Kumar,Rajneesh Shukla,Shrish Chandra

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Adarsh Kumar, the learned counsel for applicant- Anuj Rai, Mr. Arvind Kumar Maurya, the learned counsel for applicant- Deepak Kumar, Mr. Sanjay Kumar Yadav, the learned counsel for applicant- Sanjay Yadav @ Gatar, Mr. Ajeet Kumar Singh, the learned counsel for applicant- Naveen Yadav, Mr. Rajneesh Shukla, the learned counsel for applicant- Anish Singh and the learned A.G.A. for State.

Perused the record.

These applications for bail have been filed by applicants- Anuj Rai, Deepak Verma, Sanjay Yadav @ Gatar, Naveen Yadav and Anish Singh, seeking their enlargement on bail in Case Crime No. 80 of 2023, under Section 302, 307, 352, 34, 147, 148 IPC, Police Station- Sukhpura, District Ballia, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 2.4.2023, a belated F.I.R. dated 3.4.2023 was lodged by first informant Pintu Pathak (uncle of deceased) and was registered as Case Crime No. 80 of 2023, under Section 302, 307, 352, 34, 147, 148 IPC, Police Station- Sukhpura, District Ballia. In the aforesaid F.I.R. an unknown person has been arraigned as solitary accused.

The gravamen of the allegations made in the F.I.R. is to the effect that some unknown person assaulted the nephew of first informant namely Preetam Pathak on account of which he died on the spot and one Nishu Pathak sustained injuries. The injured was taken to the Hospital where he was referred to B.H.U. Varanasi for better treatment.

After aforesaid F.I.R. dated 1.1.2020 was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII. The inquest (panchayatnama) of the deceased was conducted on 3.4.2023. In

the opinion of the witnesses of inquest (panch witnesses) the nature of death of deceased was characterized as homicidal and the cause of death of deceased is said to be ante-mortem injuries sustained by deceased. Thereafter the post mortem of the body of the deceased was conducted. In the opinion of autopsy surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was Hemorrhage Shock as a result of Anti-mortem head injury. The autopsy surgeon found following injuries on the body of deceased:

(i) Abrasion 5.0 cm x 0.5 cm over frontal forehead region of skull 2.5 cm above gabella. Littern avollen.

(ii) Contusion 7.5 x 5.0 cm over left occipital region of skull over in shaper. Swellan.

According to learned A.G.A. as per medico legal report of the injured, Nishu Pathak, he sustained simple injuries but was kept under observation.

During course of investigation, Investigating Officer examined first informant and other witnesses under section 161 Cr.P.C. The injured Nishu Pathak in his statement before the Investigating Officer nominated one Rohit Mishra as the author of fatal head injury sustained by the deceased. The other accused are said to be standing at the time and place of occurrence. However, the other accused are not said to be armed with any weapon. The complicity of other persons is also stated but no specific role has been assigned to other accused. On the basis of aforesaid, Rohit Mishra was arrested on 8.4.2023. On his pointing out, the weapon of assault i.e. danda was recovered. Subsequently, the confessional statement of Rohit Mishra was recorded, wherein he disclosed the complicity of other persons including applicants. However, no role was assigned to other accused. Subsequently, Investigating Officer, examined three other witnesses namely, Prem Prakash Pathak, Savitri Devi and Archana. In the statement of Prem Prakash, it is alleged that the applicants before this Court were also present at the time of occurrence. However, even this witness has not assigned any specific role of assault to other accused except Rohit Mishra.

On the basis of above and other material collected by him during course of investigation, Investigating Officer came to the conclusion that complicity of Karan Singh is also established in the crime in question. Accordingly, Investigating Officer submitted charge sheet dated 1.6.2023, whereby seven persons namely, Rohit

Mishra, Navin Yadav, Anuj Rai, Anish Singh, Deepak Verma, Gatar @ Sanjay Yadav and Karan Singh have been charge-sheeted under sections 302, 352, 34, 147, 148 IPC. However, investigation in respect of Avnish is said to be pending.

Learned counsel for applicants submits that though the applicants are named as well as charge sheeted accused, yet they are liable to be enlarged on bail. The injured Nishu Pathak is the solitary eye witness of the occurrence giving rise to present criminal proceedings. The injured Nishu Pathak has assigned the role of assault to co-accused Rohit Mishra. The witnesses examined under section 161 Cr.P.C. have implicated the present applicants in the crime in question on account of their presence at the time and place of occurrence. However, no specific role of assault has been assigned to the applicants except Rohit Mishra. The applicants are not said to be armed with any deadly weapon either. On the aforesaid premise, it is urged that case of applicants is distinguishable from charge sheeted co-accused Rohit Mishra. As such, applicants are liable to be enlarged on bail.

Applicant Anuj Rai has criminal history of one case but the same has been explained in paragraph 14 of the affidavit filed in support of bail application. Similarly another accused Sanjay Yadav @ Gatar has criminal history of two cases which have been sufficiently explained in paragraph 19 of the affidavit. Rest of the accused are men of clean antecedents, having no criminal history to their credit. Applicant- Anuj Rai is in jail since 4.4.2023, Applicant- Deepak Verma is in jail since 27.4.2023. Applicant -Sanjay Yadav @ Gatar is in jail since 25.5.2023. Applicant-Naveen Yadav is in jail since 30.4.2023. Applicant- Anish Singh is in jail since 4.4.2023. As such, they have undergone sufficient period of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized. However, upto this stage, no incriminating circumstances has emerged necessitating the custodial arrest of applicants, during the pendency of trial. It is thus urged that applicants are liable to be enlarged on bail. In case applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with trial.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicants are named as well as charge sheeted accused, therefore they do not deserve any indulgence by this Court. All the applicants have been charge sheeted under section 34 IPC, as such, there was common intention with applicants

including charge-sheeted co-accused Rohit Mishra to commit the crime in question. The criminality committed by charge sheeted accused is joint and common, therefore, same is incapable of separation or saggregation. As such, no exception can be carved out in the case of applicants. He, therefore submits that no sympathy be shown by this Court in favour of applicants.

Having heard the learned counsel for applicants, 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 applicants, accusation made coupled with the fact that injured Nishu Pathak is the solitary eye witness of the occurrence, giving rise to present criminal proceedings, the injured Nishu Pathak in his statement under section 161 Cr.P.C. before the Investigating Officer has nominated the charge-sheeted accused Rohit Mishra as the author of the injuries sustained by the deceased as well as injured himself, no role of assault has been assigned to present applicants the only allegation made against applicants is to the effect that they were standing at the time and place of occurrence, as such the case of present applicants is clearly distinguishable from charge sheeted accused Rohit Mishra, learned A.G.A. could not point out any such distinguishing feature from the record so as to distinguish the case of present applicants from co-accused Rohit Mishra so as to deny them bail, explained criminal history of two of the accused, clean antecedents of rest of the accused, the period of incarceration undergone, police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized, inspite of above, learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during pendency of trial, the judgement of Supreme Court in **Sumit Subhaschandra Gangwal and another Vs. The State of Maharashtra and Another, 2023 Live Law (SC) 373**, the applicants are not alleged to be armed with any deadly weapon, nor there was common object with the applicants to commit the crime in question as they have not been charge-sheeted under section 149 Cr.P.C., therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comment on the merits of the case, applicants have made out a case for bail.

Accordingly, the bail applications are **Allowed**.

Let the applicants- **Anuj Rai, Deepak Verma, Sanjay Yadav @ Gatar, Naveen Yadav and Anish Singh**, be released on bail in the

aforesaid case crime number on their 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 :- 19.10.2023

Arshad