

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30661 of 2023

Applicant :- Pradeep

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashish Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Ashish Pandey, the learned counsel for applicant, the learned A.G.A. for State and Mr. Vivek Dhaka, the learned counsel representing first informant.

Perused the record.

Third supplementary affidavit filed by the learned counsel for applicant in Court today, is taken on record.

This application for bail has been filed by applicant Pradeep seeking his enlargement on bail in Case Crime No. 200 of 2018, under Sections 147, 148, 149, 307, 302, 201, 120-B, 404, 406, 34 IPC, Police Station Chhaprauli, District Baghpat, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 30.5.2018, a prompt F.I.R. dated 30.5.2018 was lodged by first informant Smt. Pooja (widow of the deceased) and was registered as Case Crime No. 200 of 2018, under Sections 147, 148, 149, 307, 302, 201, 120-B, 404, 406, 34 IPC, Police Station Chhaprauli, District Baghpat. In the aforesaid F.I.R., four persons namely Pradeep, Ankur, Sachin and Rajeev have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused fired at the husband of first informant on account of which he sustained firearm injury and thereafter carried away the injured (husband of the deceased) in their car and subsequently caused his death.

After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr. P. C. However, the dead body of the deceased was not recovered. As such, neither the proceedings of inquest nor the post mortem of the body of the deceased could be conducted. Ultimately, Investigating Officer

submitted the charge sheet dated 25.7.2018, whereby seven persons namely Pradeep, Sachin, Ankur, Smt. Anupama, Rajeev, Ram Veer and Sandeep have been charge sheeted under Sections 147, 148, 149, 307, 302, 201, 120-B, 404, 406, 34 IPC.

Learned counsel for applicant submits that though applicant is a named and charge sheeted accused, yet he is liable to be enlarged on bail. The attention of the Court was then invited to the F.I.R. giving rise to the present criminal proceedings and on basis thereof he submits that there are four named accused in the F.I.R., all the named accused have been assigned the role of firing at the deceased.

It is next contended that named accused Sachin has already has already been enlarged on bail by this Court, vide order dated 1.11.2022 passed in Criminal Misc. Bail Application No. 9820 of 2020 (Sachin Vs. State of U.P.). For ready reference, same is reproduced herein under:-

"Heard Shri V.P. Srivastava, learned Senior Advocate assisted by Shri Akhilesh Chnadra Shukla, learned counsel for the applicant; Shri Vivek Dhaka, learned counsel for the informant and learned A.G.A.

The instant bail application has been filed on behalf of the applicant, Sachin, with a prayer to release him on bail in Case Crime No. 200 of 2018, under Sections 147,148,302,307,201,406,34/120 IPC Police Station Chhaprauli, District- Baghpat, during pendency of trial.

There is allegation in the First Information Report that husband of the informant was going with informant on foot. At about 7 P.M. her elder brother-in-law (Jeth), Pradeep and his two sons ,Sachin and Anukur alongwith Rajiv came in the car and fired on him from their country made pistols. Her husband ran inside the shop of Pankaj.All the four accused dragged him out and after throwing him in the car went away. Informant suspected that her husband has been murdered and his dead body has been taken away for causing its disappearance.

Learned Senior Counsel for the applicant has submitted that it is a case of false implication. The informant is sister-in-law (Devrani),of the mother of the applicant.The applicant was arrested on 13.6.2018 and one country made pistol was allegedly recovered from him.Earlier also he was implicated by the informant in a case crime no. 155 of 2018 under sections 448,147,323,504,506 I.P.C. and case crime no. 105 of 2018 under sections 147,148,149,376/511,307,323,504,506 I.P.C. alleging the offence of attempt to rape.Therefore, there is prior enmity between the parties and hence applicant has been falsely implicated in this case. The informant in the First Information Report Report has assigned general role to all the accused persons.

Learned Senior Counsel has pointed out to the statement of witnesses recorded by the investigating officer wherein role of causing gun shot injury to the deceased has been assigned to co-accused, Pradeep. The specific role has been assigned to him and not to the applicant. It is further submitted that no one has seen the incident and only because

there was enmity of the informant with the applicant and other co-accused regarding property, they have been implicated. The dead body of the deceased was not recovered. The statements of the witnesses have been recorded by the trial court from P.W.1 to P.W.4, therefore there is no chance of tampering with the witnesses.

Learned Senior Counsel has pointed out to the statement of the P.W.1 where she has stated that she had given an application to the Superintendent of Police, Bagpat that her husband had suffered accident but later she denied the same. The applicant is in jail since 14.6.2018. He has criminal history of seven cases, which have been explained in paragraphs-3 to 9 of supplementary affidavit.

Learned counsel for the informant has vehemently opposed the bail application and has stated that there is motive regarding land dispute against the applicant. Offence has clearly been caused by the applicant and other accused persons.

Learned A.G.A. has opposed the bail prayer of the applicant but could not dispute the aforesaid facts.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties, larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of Dataram Singh Vs. State of U.P. and another reported in (2018) 3 SCC 22 and recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021 and considering 5-6 times overcrowding in jails over and above their capacity by the under trials 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 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.

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
4. That the applicant shall not, directly or indirectly, make any 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 to any police officer;
5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 to ensure presence of the applicant.
6. 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. "

Another named and charge sheeted accused Rajeev has been enlarged on bail, vide order dated 1.11.2022 passed in Criminal Misc. Bail Application No. 9231 of 2020 (Rajeev Vs. State of U.P.). For ready reference, same is reproduced herein under:-

"Heard Shri Anuj Srivastava, learned counsel for the applicant; Shri Vivek Dhaka, learned counsel for the informant and learned A.G.A for the State.

The submission is that co-accused, Sachin has already been enlarged on bail vide Criminal Misc. Bail Application No. 9820 of 2020 by order of date and the case of the applicant stands on identical footing, hence the applicant is also entitled for bail on the ground of parity. The applicant is in jail since 8.8.2018. The applicant has criminal history of six cases, which have been explained in paragraph- 2 of the supplementary affidavit.

On the other hand learned A.G.A and learned counsel for the informant have opposed the prayer for bail.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties, larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of Dataram Singh Vs. State of U.P. and another reported in (2018) 3 SCC 22 and recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021 and considering 5-6 times overcrowding in jails over and above their capacity by the under trials 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, Rajeev, involved in Case Crime No. 200 of 2018 (S.T. No. 413 of 2018), under Sections 147, 148, 149, 307, 302, 201, 402, 120-B, 34 IPC, Police Station- Chhaprauli District- Bagpat, 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.

- 1. The applicant will not tamper with the evidence during the trial.**
- 2. The applicant will not pressurize/ intimidate the prosecution witness.**
- 3. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.**
- 4. The applicant shall not commit an offence similar to the offence of which they are accused, or suspected of the commission of which they are**

suspected.

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

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."

Named and charge sheeted accused Ankur has also been enlarged on bail, vide order dated 9.11.2022 passed in Criminal Misc. Bail Application No. 39035 of 2020 (Ankur Vs. State of U.P.). For ready reference, same is reproduced herein under:-

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

This is the second bail application under Section 439 Cr.P.C. moved by the applicant - Ankur to enlarge him on bail in Case Crime No. 200 of 2018 under Sections 147, 148, 302, 307, 201, 406/34/120 IPC, Police Station Chhaprauli, District Baghpat with the argument that his first bail application was rejected on 06.12.2021. Later on, co-accused Sachin got bail by this Court on 01.11.2022. His case is placed on the better footing than that of Sachin. Hence, prayer for bail is made.

Learned A.G.A. has opposed the bail application and argued that previously the bail application of the applicant has been rejected on merit. Hence, now he cannot claim parity of the co-accused.

Learned counsel for the first informant opposed the bail application and submitted that the first informant is an eye witness who has supported the prosecution version in the trial court. As per the version of the witnesses, deceased died on the spot and his dead body was taken up by the accused persons. The first bail application of the applicant was rejected now there is no sufficient ground for allowing the second bail application.

Learned counsel for the applicant has placed before the court the judgement in the case of Nanha Vs. State of U.P., 1993 Cri.L.J. 938 wherein the Division Bench of this Court held that an accused is entitled to be released on bail on the ground of parity by moving the second or third bail application in the circumstances that at the later date the co-accused of the same criminal case, with similar role was granted bail by the another Judge, even without disclosing the fact that the bail application of the another co-accused with similar role had already been rejected by the another Judge. The order dated 27.04.2022 passed in Criminal Misc. Bail Application No. 1464 of 2022 - Vivek Kumar Vs. The Union of India, by the coordinate bench is also placed before the Court, wherein on the basis of various rulings the court reached at a conclusion that the accused, whose bail application has been rejected earlier, can be granted bail on the ground of parity of co-accused who has been granted bail later on.

From perusal of the record, it appears that a general role has been assigned to all the four accused persons. Admittedly, the present accused and co-accused Sachin are nephews of the deceased. It is clear that the

first bail application of the present applicant was rejected by this court on 06.12.2021 and later on, co-accused Sachin having identical has been granted bail on 01.11.2022 by the coordinate bench of this court.

After perusing the record in the light of the submissions made at bar and taking an overall view of all the facts and circumstances of this case, the nature of accusations, severity of punishment in case of conviction, the period of detention already undergone, the unlikelihood of early conclusion of trial without commenting on the merits of the case, this Court is of the view that the applicant may be enlarged on bail.

The bail application is allowed.

Let the applicant Ankur involved in Case Crime No. 200 of 2018 under Sections 147, 148, 302, 307, 201, 406/34/120 IPC, Police Station Chhaprauli, District Baghpat be released on bail on his furnishing personal bonds and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

1. The applicant will not tamper with the evidence.
2. The applicant will not indulge in any criminal activity.
3. The applicant will not pressurize/intimidate the prosecution witnesses and will co-operate in the trial.
4. The applicant will appear regularly on each and every date fixed by the trial court unless his personal appearance is exempted through counsel by the court concerned.

In case of breach of any conditions mentioned above, the trial court will be at liberty to cancel the bail of the applicant."

With reference to above, the learned counsel for applicant submits that in the bail orders of named and charge sheeted accused referred to above, it has been observed that general role is assigned to all the four named accused. On the above premise, the learned counsel for applicant submits that the case of present applicant is similar and identical to named and charge sheeted co-accused. There is no such distinguishing feature on the basis of which the case of present applicant could be so distinguished from other named/charge sheeted co-accused so as to deny bail to the applicant. He, therefore, submits that in view of above and for the facts and reasons recorded in the bail orders of named and charge sheeted co-accused, applicant is also liable to be enlarged on bail.

It is next contended that applicant has criminal history of 28 cases. However, the same has been sufficiently explained. Applicant is not on bail in 7 criminal cases out of the 28 criminal cases pending against him. With reference to the three Judges Bench judgement of the Supreme Court in **Brijmani Devi Vs. Pappu Kumar and another, (2022) 4 SCC, 497**, learned counsel for applicant submits that merely on the ground of criminal history an accused cannot be denied bail. Applicant is in jail since 13.06.2018. As such, he has undergone more than 5 years and 4 months of

incarceration.

Even though the applicant has criminal history to his credit, the same is sufficiently explained. Applicant is in jail since 07.06.2023. As such, he has undergone more than 4 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 stands crystallized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged that applicant is liable to be enlarged on bail. In spite of above, the fact that the applicant is in custody and a period of more than 5 years and 4 months has expired since the date of the submission of charge sheet, the consequential trial has not yet concluded. Applicant cannot be said to be responsible in the delay in conclusion of trial as he is in custody. Upto this date, even all the prosecution witnesses have not yet been examined. Learned counsel for applicant has then referred to the judgement of the Supreme Court in **A.R. Antulay Vs. R.S. Nayak (1992) 1 SCC 225** and on the basis thereof submits that right to speedy trial is a fundamental right of an accused, therefore, applicant is liable to be enlarged on bail on this ground. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the bail.

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 has criminal history of 28 cases, therefore, he is not liable to be enlarged on bail. However, they could not explain the ratio laid down by the Supreme Court in the case of **Brijmani Devi Vs. Pappu Kumar and another (supra)** against present application nor could they dislodge the factual and legal submissions urged by the 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, the learned counsel representing first informant and upon perusal of record, evidence, accusations made, nature and gravity of offence, complicity of accused and coupled with the fact that similarly situate and circumstanced named and charge sheeted co-accused have already been enlarged on bail, the learned A.G.A. and the learned counsel representing first informant could not point out any such distinguishing feature in the case of present applicant from other named/charge sheeted but bailed out co-accused, so as to distinguish the case of the present applicant from other named/charge sheeted co-accused and thereby deny him bail, the explained criminal history of the applicant, the judgement of

Supreme Court in the case of **Brijmani Devi Vs. Pappu Kumar and another (supra)**, the period of incarceration undergone the Police report in terms of Section 173(2) Cr.P.C. has already been submitted against applicant, therefore the entire evidence sought to be relied upon by the prosecution against the applicant stands crystallized, yet in spite of above, the learned A.G.A. and the learned counsel for first informant could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the trial of the applicant has already commenced by means of Sessions Trial No. 413 of 2018 (State Vs. Rajeev and others), in spite of above fact that a period of more than 5 years and 4 months has rolled by from the date of submission of charge sheet, the trial has not yet concluded, the applicant who is in custody cannot be held responsible for delay in conclusion of trial, upto this stage all the prosecution witnesses of fact have not yet been examined, the right of speedy trial is a fundamental right of an accused, vide judgement of the Supreme Court in **A.R. Antulay Vs. R.S. Nayak (supra)**, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel representing first informant 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.

The bail application is, accordingly, **allowed**.

Let the applicant **Pradeep** involved in above mentioned case crime number be released on bail on his furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:-

- (i) The applicant shall file an undertaking to the effect that he 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..
- (iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, in accordance with law, under section 174-A I.P.C.
- (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 him 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 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

HSM