

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43720 of 2023

Applicant :- Bramhnarayan Tiwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Kishor Gupta, Shailendra Kumar Ojha, Shiv Shankar Gupta, Shyam Surat Shukla

Counsel for Opposite Party :- G.A., Ashok Kumar Rai.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31955 of 2023

Applicant :- Jagdish Narayan

Opposite Party :- State of U.P.

Counsel for Applicant :- Shiv Shankar Gupta, Ram Kishor Gupta, Shailendra Kumar Ojha, Shyam Surat Shukla

Counsel for Opposite Party :- G.A., Ashok Kumar Rai, Pavan Kumar Pandey

Hon'ble Rajeev Misra, J.

Heard Mr. Shyam Surat Shukla, the learned counsel for applicants, the learned A.G.A. for State and Mr. Ashok Kumar Rai, the learned counsel for first informant.

These applications for bail have been filed by applicants Bramhnarayan Tiwari and Jagdish Narayan seeking their enlargement on bail in Case Crime No. 43 of 2023, under section 147, 148, 308, 323, 427, 506, 304 IPC, Police Station- Sumerpur, District hamirpur during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 21.1.2023 a prompt F.I.R. dated 22.1.2023 was lodged by first informant Alok and was registered as Case Crime No. 43 of 2023, under sections 147, 148, 308, 323, 427, 506, 304 IPC, Police Station- Sumerpur, District hamirpur. In the aforesaid F.I.R., five persons namely, Brahm Narayan Tiwari, Ajay Narayan, Udi Narayan, Uday Narayan and Deepak Narayan have been nominated as named accused.

The gravamen of the allegations made in the FIR is to the effect that named accused armed with deadly weapons formed an unlawful assembly assaulted the family members of first informant on account of which one Chandra Prakash, uncle of the first informant sustained injuries, whereas eight other persons also sustained injuries. Subsequently, the injured Chandra Prakash succumbed to the injuries sustained by him on 24.1.2023. Consequently, the case was converted under section 304 IPC. In the aforesaid F.I.R. five persons namely, Brahm Narayan Tiwari, Ajay Narayan, Udi Narayan, Udai Narain, Deepak Narayan, Ramsanehi, Jagdev, Ramgopal, Pappu, Chote, Chandraprakash, Babu, Kallu, Alok have sustained injuries.

In respect of the same incident, another FIR dated 22.1.2023 was lodged by first informant Brahm Narayan Tiwari from the side of the present applicant and was registered as Case Crime No. 44 of 2023 under section 147, 148, 308, 323 IPC, Police Station-Sumerpur, District Hamirpur.

According to prosecution story as unfolded in the FIR named accused armed with deadly weapon came to the house of first informant and assaulted various persons. On account of which nine persons namely, Chandra Prakash, Babbu, Ram Chandra, Ramesh, Pinki, Asha, Sunita, Bhagvati and Kusum sustained injuries.

Learned counsel for applicant contends that occurrence is admitted to the parties in as much as in respect of the same incident, 2 FIRs were lodged from both the sides. The principal issue that arises for consideration is as to who is aggressor. However upto this stage, no such evidence has emerged on record on the basis of which the allegations in the in crimes in question can be conclusively concluded. He therefore contents that applicants are liable to be enlarged on bail. It is next contended that in the FIR, general role has been assigned to all the accused. As per postmortem report of the deceased Chandra Prakash, the autopsy surgeon has opined that cause of death of the deceased is coma as a result of anti-mortem head injury. However, the author of the head injury has not been specified either in the FIR nor in the statement of witnesses examined under section 161 Cr.P.C. He therefore submits that general role has been assigned to all the accused.

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 8.2.2023. As such, he has undergone nine months 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 applicant stands crystalized. 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 case the applicant is enlarged on bail, he 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 applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. However, he could not 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, 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 that the occurrence giving rise to present criminal proceedings is admitted to the parties, inasmuch as cross FIRs were lodged from both the side, as such the principal question required to be assaulted is as to who is aggressor, up to this stage, no such material has emerged on the basis of which the aggressor in the crime in question could be pointed out, as per postmortem report of the deceased Chandra Prakash, cause of death of deceased is Coma as a result of anti-mortem head injury, in the FIR giving rise to present application, general role has been assigned to all the accused, the author of the fatal injury sustained by deceased has not been specified in the statement of the witnesses examined under section 161 CrPC, applicant Deepak Narayan is not named in the FIR, his complicity is established in the statement of injured, the period of incarceration undergone, the clean antecedents of applicant, 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, yet inspite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating 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**, 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 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- **Bramhnarayan Tiwari** and **Jagdish Narayan** 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 :- 2.12.2023

Arshad