

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33533 of 2023

Applicant :- Hawaldar

Opposite Party :- State of U.P.

Counsel for Applicant :- Shailendra Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Shailendra Kumar Tripathi, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This repeat application for bail has been filed by applicant-Hawaldar seeking her enlargement on bail in Case Crime No. 643 of 2020 under Sections 147, 307, 506, 302, 323 I.P.C., Police Station-Gursahayganj, District-Kannauj, during the pendency of trial.

4. First bail application of applicant was rejected by this Court by a detailed order dated 25.08.2021 passed in Criminal Misc. Bail Application No. 27193 of 2021 (Hawaladar Vs. State of U.P.). For ready reference, order dated 25.08.2021 is reproduced herein under:

"Heard leaned counsel for the applicant, learned counsel for the first informant, learned A.G.A. for the State-respondent and perused the material brought on record.

The present bail application has been filed by the applicant in case crime No. 643/2018 (S.T.No. 54/2019), under Sections 147, 307, 506, 302, 323 IPC, police station Gursahaiganj, District Kannauj with the prayer to enlarge the applicant on bail.

According to prosecution version, the FIR was lodged against applicant

and eight accused persons alleging that on 29.11.2018 at 9.30 AM they have assaulted deceased Ram Naresh and after that he was put on fire and when informant's brother Narendra Singh @ Pappu, Raju and wife of deceased namely Malti tried to intervene, they were also assaulted with lathis, sticks and spade. Later on deceased Ram Naresh died due to burn injuries.

It has been argued by learned counsel for the applicant that the accused-applicant is innocent and he has been falsely implicated in this case. It was submitted that in FIR nine accused persons including applicant were named and that no specific role has been attributed to the applicant. It was further submitted that during investigation, involvement of five named accused persons was found false and they were exonerated and that charge-sheet was filed only against four accused persons including applicant. Learned counsel has submitted that deceased has sustained only 40% burn injuries and that no specific role in causing burn injuries has been assigned to the applicant. It was further argued that applicant is aged about 65 years and that there is no independent witness of alleged incident. It was also submitted that there is no cogent evidence against the applicant and that he is in judicial custody since 18.12.2018, having no criminal history and that in case, applicant is enlarged on bail, the applicant will not misuse the liberty of bail.

On the other hand, learned A.G.A. as well as learned counsel for the first informant have opposed the prayer for bail and argued that applicant is named in F.I.R. and that all the injured witnesses have consistently stated that applicant was involved in the incident, wherein informant's brother Ram Naresh was assaulted and put on fire and resultantly he died of burn injuries in hospital. Besides that, three persons, namely, Narendra, Raju and wife of deceased Malti have sustained injuries. It was submitted that injured Raju and Narendra Singh @ Pappu have sustained as many as four injuries each. Learned counsel for the first informant has also referred the statement of deceased, which has to be considered as dying declaration, wherein he has clearly stated that he was assaulted and burnt by applicant and co-accused persons and that when his brother Narendra Singh @ Pappu and Raju and Malti tried to intervene, they were also assaulted by lathis, sticks and spade.

After considering submissions of learned counsel for the parties, looking into the seriousness of the allegations, gravity of the offence, severity of punishment and considering all attending facts and circumstances of the case, no case for grant of bail is made out.

Accordingly, the instant bail application filed on behalf of applicant Havaladar is rejected.

Order Date :- 25.8.2021 "

5. Learned counsel for applicant contends that subsequent to order dated 25.08.2021, co-accused Rahul and Kalectar, who are similarly situated and circumstances like the applicant have

already been enlarged on bail by this Court vide order dated 25.08.2022 passed in Criminal Misc. Bail Application No. 5074 of 2021 (Rahul and another Vs. State of U.P.). For ready reference the order dated 25.08.2022 is reproduced herein-

"Ref: Criminal Misc. Correction Application No.8 of 2022

Heard.

Correction application is allowed. Necessary correction has been incorporated in the order dated 18.08.2022. Correct order shall read as under:

"By means of this bail application the applicants have prayed to be enlarged on bail in Case Crime No.643 of 2018 at Police Station-Gursahaiganj, District-Kannauj under Sections 325, 506, 302, 323 IPC. The applicant is in jail since 25.02.2019.

The bail application of the applicants was rejected by the learned Sessions Judge, Kannauj on 30.05.2019. Shri Pramod Kumar, learned counsel for the applicants contends that the F.I.R. assigns a vague and general role to the applicants along with either other co-accused persons in the assault. The applicants have been falsely implicated on account of a running village feud. The statement of the deceased taken down under Section 161 Cr.P.C. on 01.12.2018 is statement consistent with the F.I.R. However, prosecution did not get the statement of the deceased recorded under Section 164 Cr.P.C. for a period of fortnight when he was in hospital and was fit to give his statement. The implication of large number of accused persons is not consistent with the nature of the incident and renders prosecution story unworthy of belief. The statement of the deceased under Section 161 Cr.P.C. is vastly exaggerated in the attending facts, circumstances and evidences of this case. Lack of credibility of the prosecution story is also borne out by the fact that other accused persons who were named in the statement of the deceased as well as F.I.R. were not charge-sheeted by the police. Learned counsel for the applicants contends that the applicants do not have any criminal history apart from the instant case. The applicants are not a flight risk and undertake to cooperate with the court proceedings. There is no possibility of their influencing witnesses, tampering with the evidence or reoffending.

The applicants are in jail since 25.02.2019. The trial is moving at a snail's pace and shows no sign of early conclusion. Indefinite delay in the trial has lead to indefinite incarceration of the applicants without evidence to connect them with the offence. The applicants had cooperated with the investigation and had joined the trial. Shri Rishi Chaddha, learned A.G.A. could not satisfactorily dispute the aforesaid submissions from the record. He, however, does not dispute the fact that the applicants do not have any criminal history apart from this case.

I see merit in the submissions of the learned counsel for the applicants and

hold that the applicants are entitled to be enlarged on bail.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicants-Rahul and Kalectar 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 subject to following conditions.

(i) The applicants will not tamper with the evidence during the trial.

(ii) The applicants will not influence any witness.

(iii) The applicants will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The applicants shall not directly or indirectly make 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 to any police officer or tamper with the evidence.

In case any averment in the bail application or during the course of argument is found to be false or in case of breach of any of the above condition the State may move an application for cancellation of bail application."

Order Date :- 25.8.2022 "

6. Similarly another co-accused Ghandhi Pal has also been enlarged on bail by this Court vide order dated 06.02.2023 passed by this Court in Criminal Misc. Bail Application No. 29244 of 2019 (Gandhi Pal Vs. State of U.P.). For ready reference same is reproduced herein-under:-

"1. List has been revised. Learned counsel for the informant is not present.

2. Heard Shri Shailendra Kumar Tripathi, learned counsel for the applicant as well as Shri Vibhav Anand Singh, learned A.G.A. for the State and perused the record.

3. Applicant seeks bail in Case Crime No.643 of 2018, under Sections 147, 307, 506, 302 and 323 I.P.C., Police Station Gursahaiganj, District Kannauj, during the pendency of trial.

4. It is submitted by learned counsel for the applicant that similarly placed co-accused persons, Rahul and Kalectar, have already been enlarged on bail by this Court vide order dated 25.08.2022 passed in Criminal Misc. Bail

Application No.5074 of 2020. The applicant is languishing in jail since 18.12.2018, having no criminal history. He further submitted that since the role of the applicant is identical to that of co-accused, who has already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity.

5. The prayer for bail has been vehemently opposed by learned A.G.A. However, the aforesaid factual aspects of parity to the co-accused and of no criminal history of the applicant, have not been disputed by him.

6. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, and also taking into consideration the judgment of the Apex Court passed in the case of Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation, MANU/SCOR/22410/2021 and the judgment of this Court passed in the case of Nanha S/o Nabhan Kha vs. State of U.P., 1993 Cri.L.J. 938, 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 on the ground of parity. The bail application is allowed on the ground of parity.

7. Let the applicant- Gandhi Pal involved in aforementioned case crime number be released on bail on 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 will not tamper with the evidence during the trial.

(ii) The applicant will not pressurize/ intimidate the prosecution witness.

(iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(v) 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 or tamper with the evidence.

8. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

9. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

10. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion on the testimony of the witnesses.

Order Date :- 6.2.2023 "

7. Attention of the Court was then invited to paragraph two on the second page of the order dated 25.08.2022. With reference to above, the learned counsel for applicant contends that in spite of the fact that the role of torching and assault has been assigned to applicant and other co-accused, however, co-accused has already been enlarged on bail. According to the learned counsel for applicant, the case of present applicant is similar and identical to that of bailed out co-accused. 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 orders as noted herein above of co-accused, applicant is also liable to be enlarged on bail on the ground of parity.

8. Even otherwise applicant is a man of clean antecedents inasmuch he has no criminal history to his credit except the present one. Applicant is in custody since 18.12.2018. As such, he has under-gone more than four years and nine and a half months of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted and therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, upto this stage, no such circumstance has emerged on the basis of which it can be said that custodial arrest of applicant is absolutely necessary during the pendency 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.

9. Per contra, the learned A.G.A. for State has opposed the prayer for bail. He submits that since the 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 learned counsel for applicant with reference to the record at this stage

10. Having heard the learned counsel for applicant, the learned A.G.A. for State and upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant coupled with the fact that similarly situate and circumstanced co accused have already been enlarged on bail, the learned A.G.A. could not point out any such circumstance from the record distinguishing the case of present applicant from that of bailed out co-accused so as to deny him bail, the police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to relied upon by the prosecution against applicant stands crystallized, yet in spite of above no such incriminating circumstance could be pointed out by learned the A.G.A. from the record necessitating the custodial arrest of 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), the clean antecedents of applicant, the period of incarceration undergone but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

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

12. Let the applicant-**Hawaldar** involved in aforesaid case crime

number 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 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.

13. 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 :- 17.10.2023

YK