

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33500 of 2023

Applicant :- Pradeep Kumar Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinod Kumar Yadav

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33711 of 2020

Applicant :- Dinesh Yadav And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Ramanuj Tripathi, Jash Ram, Mani Shanker Pandey, Nand Shyam

Counsel for Opposite Party :- G.A., Dashrath Lal

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6323 of 2023

Applicant :- Kamlesh Kumar Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Mani Shanker Pandey

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6350 of 2023

Applicant :- Awadesh Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Mani Shanker Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard the learned counsel for applicants and the learned A.G.A. for State.

2. Perused the record.

3. These repeat applications for bail have been filed by applicants-Pradeep Kumar Yadav, Dinesh Yadav, Ganesh Yadav, Kamlesh Kumar Yadav and Awadhesh Yadav seeking their enlargement on bail in Case Crime No. 55 of 2017, under Sections 147, 148, 149, 302 IPC, Police Station-Holagarh, District-Allahabad during the pendency of trial i.e. Sessions Trial No. 582 of 2017 (State Vs. Awadhesh Yadav and Others along with connected Sessions Trial No. 581 of 2017 and Session Trial No. 580 of 2017 now pending in the court of Additional District Judge, Court No.-15, Allahabad.

4. The first bail applications of applicants-Pradeep Kumar Yadav, Kamlesh Kumar Yadav and Awadhesh Yadav were rejected by this Court by a detailed order dated 23.03.2022 passed in Criminal Misc. Bail Application No. 50626 of 2021 (Pradeep Kumar Yadav and Others Vs. State of U.P) and the first bail application of applicant-Dinesh Yadav and Ganesh Yadav were also rejected by this Court by a detailed order dated 12.07.2019 passed in Criminal Misc. Bail Application No. 41546 of 2017 (Dinesh Yadav and Another Vs. State of U.P.). For ready reference, the orders dated 23.03.2022 and 12.07.2019 are reproduced hereinunder:-

Criminal Misc. Bail Application No. 50626 of 2021 (Pradeep Kumar Yadav and Others Vs. State of U.P)

"1. Heard Mr. Satyendra Narayan Singh, the learned counsel for applicant, Pradeep Kumar Yadav, Mr. Mani Shanker Pandey, the learned counsel for applicants, Kamlesh Kumar Yadav and Awadesh Yadav, the learned AGA for State and Mr. Dashrath Lal, the learned counsel for first informant.

2. These applications for bail have been filed by applicants, Pradeep Kumar Yadav, Kamlesh Kumar Yadav and Awadesh Yadav seeking their enlargement on bail in Case Crime No.55 of 2017, under Sections 147, 148, 149, 302 IPC, Police Station Holagarh, District Allahabad, during the pendency of trial.

3. Perused the record.

4. Criminal Misc. Bail Application No.50626 of 2021 (Pradeep Kumar Yadav Vs. State of U.P) came up for orders on 24.02.2022 and this Court passed following order:-

"Heard Mr. Satyendra Narayan Singh learned counsel for applicant and learned A.G.A. for State.

Perused the record.

At the very outset, learned A.G.A. submits that following bail applications filed by co-accused are already pending before this Court.

Criminal Misc. Bail Application No.29630 of 2017 (Sandeep Yadav Vs. State of U.P.).

Criminal Misc. Bail Application No.41546 of 2017 (Dinesh Yadav And Another Vs. State of U.P.).

Criminal Misc. Bail Application No.26600 of 2018 (Kamlesh Kumar Yadav Vs. State of U.P.).

Criminal Misc. Bail Application No.15927 of 2020 (Dinesh Yadav And Another Vs. State of U.P.).

Criminal Misc. Bail Application No.33711 of 2020 (Dinesh Yadav And Another Vs. State of U.P.).

Criminal Misc. Bail Application No.49129 of 2020 (Awadhesh Yadav Vs. State of U.P.).

In view of above, connect aforementioned criminal misc. bail applications along with this bail application.

Matter shall re-appear as fresh on 10.03.2022 along with connected matters."

5. Pursuant to above order dated 24.02.2022 all the bail applications mentioned above were connected and have now been listed together. Since all the bail applications relate to the same case crime number, they have been heard together and are being disposed of finally, by a common order.

6. Record shows that in respect of an incident which is alleged to have occurred on 14.03.2017 a prompt FIR dated 14.03.2017 was lodged by first informant, Kalawati and was registered as Case Crime No.0055 of 2017, under Sections 147, 148, 149, 452, 302 IPC, Police Station Holagarh, District Allahabad. In the aforesaid FIR six persons namely, Awadesh Yadav, Kamlesh Yadav, Dinesh Yadav, Pradeep Yadav, Sandeep Yadav and Ganesh Yadav have been nominated as named accused.

7. The gravamen of the allegations made in the aforesaid FIR is to the effect that named accused, Awadesh and Kamlesh armed with countrymade firearm, Dinesh, Pradeep and Ganesh armed with danda and Sandeep armed with rambha (iron rod) with a common object assaulted Ravi son of first informant and committed his death. Thereafter they are alleged to have assaulted Amar Singh, husband of the first informant leading to his death.

8. After registration of aforementioned FIR, investigating officer proceeded with statutory investigation of aforementioned case crime number in terms of Chapter XII CrPC.

9. Thereafter the inquest (panchayatnama) of the body of deceased, Ravi was conducted on 15.03.2017 on the information given by the first informant, Kalawati Devi. In the opinion of panch witnesses the nature of death of the deceased was homicidal. Further the inquest (panchayatnama) of the body of the deceased, Amar Singh was conducted on 15.03.2017. In the opinion of panch witnesses the nature

of death of the deceased was suicidal.

10. Thereafter postmortem of the body of the deceased, Ravi was conducted. In the opinion of the autopsy surgeon, cause of death of deceased, Ravi was shock and haemorrhage as a result of firearm injuries. The autopsy surgeon found following antemortem injuries on the body of the deceased:-

"1. L.W. 2cm x .5cm into bone deep on lt. side skull 3cm above from lt. ear.

2. L.W. .5cm x .5cm on lt. side skull 5cm above from lt. ear.

3. Fire arm wound of entry 2cm x 1cm x through and through and above injury no.4 on lt. side face 1cm lateral to lt. eye blackening present.

4. Fire arm wound of exit 8cm x 5cm on rt. side back of skull 2cm behind from rt. ear margin everted communicating from injury no.3.

5. L.W. .6cm x .5cm on lt. side forehead 4cm above from lt. eyebrow.

6. L.W. 5cm x 1cm on lt. side skull (forehead) 7cm above from lt. eyebrow.

7. Abrasion 5cm x 4cm on back of rt. knee.

8. Fire arm wound of entry .6cm x .6cm is through and through and injury no.9 on rt. side arm 10cm above from rt. elbow blackening present margin inverted.

9. Fire arm wound of exit 1cm x 1cm into communicating into injury no.8 on rt. side elbow margin everted."

11. Similarly, postmortem of body of the deceased, Amar Singh was conducted. In the opinion of the autopsy surgeon, cause of death of the deceased, Amar Singh was shock, haemorrhage and coma as a result of antemortem injuries. The autopsy surgeon found following antemortem injuries on the body of the deceased:-

"1. L.W. 4cm x 1cm x bone deep on left side forehead, 6cm above from left eyebrow.

2. L.W. 8cm x 1cm into bone cut in left side top of skull, 10cm above from left eyebrow.

3. L.W. 8cm x 7cm into bone cut on left side back of skull, 2cm behind from left ear brain matter coming from bone.

4. L.W. 7cm x 2cm into bone cut on back of left side skull, 9cm behind left ear.

5. L.W. 7cm x 1cm into bone cut on right side top of skull, 10cm above right ear.

6. L.W. 1cm x 1cm on left side lateral shoulder.

7. Contusion 3cm x 1cm on left side chest 9cm above left nipple at 11 O'clock position.

8. Contusion 8cm x 7cm on left side abdomen.

9. L.W. 0.5cm x 0.5cm on right arm 16 cm behind right shoulder."

12. During course of investigation, investigating officer examined first informant and other witnesses under Section 161 CrPC and also collected other material which is adverse to applicants. On the basis of above investigating officer opined to submit a chargesheet. Accordingly, the investigating officer submitted the chargesheet dated 29.05.2017 whereby the named accused have been chargesheeted. After submission of aforementioned chargesheet cognizance was taken upon the same by court concerned. Since the offence complained of is triable by the Court of Sessions, the court concerned committed the case to the Court of Sessions. Resultantly Sessions Trial came to be registered in the Court of Sessions as Sessions Trial No.582 of 2017 (State Vs. Awadhesh Yadav and others), under Sections 147, 148, 149, 452, 504, 302 IPC which is said to be pending in the Court of Sessions. On date two prosecution witnesses of fact namely, PW-1 and PW-2 have been examined.

13. Criminal Misc. Bail Application No.29630 of 2017 (Sandeep Yadav Vs. State of UP) filed by co-accused was allowed by this Court vide order dated 11.08.2017. For ready reference the same is reproduced herein below:-

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

It is submitted by learned counsel for the applicant that although two persons were done to death in this matter, yet no specific role has been assigned to the applicant for causing injuries with the weapon rumbha. Referring to the injury-sheet of both the deceased described in the postmortem report, it is submitted that injuries shown in the postmortem report could not be caused with the weapon rumbha. It is further submitted that the entire prosecution story against the applicant is false. Applicant was not involved in the crime nor was present on the spot. Had he been present on the spot and had caused the injuries with the weapon rumbha, this fact ought to have come in the F.I.R. and in the statement recorded under section 161 Cr.P.C. Medical evidence is also not in support of the prosecution case. It is further contended that incident took place in otherwise manner at another place. Applicant has been falsely implicated in this case on the basis of suspicion and perceived enmity. The applicant has no criminal history. He is languishing in jail since 24.3.2017 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

On the other hand, learned AGA 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 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 Sandeep Yadav involved in Case Crime No. 55 of 2017 under Sections 147, 148, 149, 452, 302, 325 I.P.C., P.S. Holagarh, District Allahabad be released on bail on his furnishing a personal bond and two heavy sureties (not less than rupees five lacs) 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 he is accused, or suspected, of the commission of which he is 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 him from disclosing such facts to the Court or to any police officer or tamper with the evidence.*

In case of default of any of the conditions enumerated above, complainant is free to move an application for cancellation of bail before this Court."

14. Mr. Satyendra Narayan Singh, the learned counsel for the applicant, Pradeep Kumar Yadav contends that though applicant is a named as well as chargesheeted accused but he is innocent. Case of the present applicant is distinguishable from the named accused, Awadhesh, Kamlesh and Sandeep. Named accused, Awadhesh and Kamlesh are said to be armed with countrymade gun whereas named accused, Sandeep is said to be armed with rambha (iron rod) and the applicant, Pradeep Kumar Yadav alongwith co-accused, Dinesh Yadav and Ganesh are said to be armed with danda. Referring to the postmortem report of the deceased, Ravi Kumar he submits that cause of death of deceased, Ravi Kumar is gunshot injury. Referring to the postmortem report of the deceased, Amar Singh he submits that cause of death of deceased was incised wound. Referring to the nature of the weapons which are said to be held by the named accused he submits that the fatal injuries could not have been caused by present applicant. He further contends that co-accused, Sandeep Yadav who was armed with rambha has already been enlarged on bail by this Court vide order dated 11.08.2017. He, therefore, submits that case of present applicant is on better footing than co-accused, Sandeep Yadav and, therefore, he be enlarged on bail.

15. Mr. Mani Shankar Pandey, the learned counsel for applicants, Kamlesh Kumar Yadav and Awadhesh Yadav contends that though applicants are named as well as a chargesheeted accused but they are innocent.

16. From perusal of the FIR giving rise to these applications for bail it is apparent that applicants, Kamlesh Kumar Yadav and Awadhesh Yadav are shown to be armed with a countrymade gun. Referring to the

postmortem reports of the deceased and the statements of the witnesses he has doubted the prosecution story itself. In the submission of the learned counsel for applicants two gunshots are said to have been fired whereas only one of the deceased has sustained gunshot injury. On the aforesaid premise he submits that who is the author of the fatal gunshot injury has not been specified or identified by the prosecution witnesses of fact. He, therefore, submits that the benefit of doubt be extended in favour of applicant at this stage and he be enlarged on bail. He has further doubted the prosecution story and the credibility as well as reliability of first informant.

17. Per contra, the learned AGA has opposed these applications for bail. He contends that as per the prosecution story named accused, Awadhesh and Kamlesh are said to be armed with countrymade firearm. One of the deceased has died on account of gunshot injury. He has then referred to the judgment of the Supreme Court in *Neeru Yadav Vs. State of UP and another*, (2016) 15 SCC 422 and on basis thereof he submits that at this stage no distinction can be drawn with regard to role of applicants, Awadhesh and Kamlesh. He has then referred to the postmortem reports of the deceased and on the basis of the injuries sustained by the deceased he submits that the criminality alleged to have been committed by named accused so interlinked and intertwined and thus cannot be segregated and separated to carve out a distinction. He lastly contends that the trial has already commenced. Two prosecution witnesses of fact i.e. PW-1 and PW-2 have already been examined by the court below. He, therefore, submits that in the interest of justice a direction is issued to the trial court to conclude trial expeditiously instead of enlarging the applicants on bail.

18. Mr. Dashrath Lal, the learned counsel for first informant has adopted the arguments raised by the learned AGA. He further submits that though the occurrence has taken place in the night at around 09:00 p.m. but the named accused have been clearly identified. There is nothing on record to infer that applicants are being falsely prosecuted or the witnesses examined under Section 161 CrPC by the investigating officer during the course of investigation are inimical to the first informant. No such animus has been shown so as to disbelieve the prosecution story. He further submits that two members of the family namely father and the son have been put to death by the named accused who committed the alleged criminality with a common object. As such, no indulgence be granted by this Court in favour of the applicants.

19. In rejoinder, learned counsel for the applicants rejoined the submission raised by them. They further submits that applicants have no criminal history to their credit except the present one. Applicants are in jail since 17.03.2017 and 20.03.2017. As such, they have undergone more than five years of incarceration. Looking to the period of incarceration he submits that applicants are liable to be enlarged on bail. It is thus urged that in case applicants are enlarged on bail, they shall not misuse the liberty of bail and shall cooperate with the trial. It is lastly contended that since chargesheet has already been submitted against applicants and the trial has already commenced, the evidence sought to be relied upon by prosecution against applicants stands crystallized. As such, custodial arrest of applicants is not absolutely necessary during course of trial. It is thus urged that applicants be enlarged on bail.

20. Having heard the learned counsel for applicants, the learned AGA for State, the learned counsel for the first informant and looking into the nature of evidence, complicity of accused and the accusations made, the injuries sustained by the deceased, this Court does not find any good ground to enlarge the applicants on bail.

21. Accordingly, present bail applications are rejected.

Order Date :- 23.3.2022"

Criminal Misc. Bail Application No. 41546 of 2017 (Dinesh Yadav and Another Vs. State of U.P.);:-

"1. Heard Sri D.K. Srivastava, Advocate holding brief of Sri Brijesh Sahai, learned counsel for applicants; and, Sri Dashrath Lal Yadav, learned counsel for complainant and learned AGA for State of U.P.

2. The present bail application has been moved by accused-applicants for enlarging them on bail in Case Crime No. 55 of 2017, under Sections 147, 148, 149, 452, 325 and 302 I.P.C., Police Station-Holagarh, District- Allahabad.

3. It is submitted that eye witness, Smt. Kalawati Devi, wife of deceased was examined by Police after more than 13 hours, though Informant also said that she has been smashed by lathi but as per medical report, opinion of doctor is that injury is about 1-2 day ago. Record shows that applicants are real brother and both named in FIR along with four others with the allegation that they have caused murder of Informant's son and husband. Informant and others have supported FIR version in their statements and weapon of crime has also been recovered at the pointing out of applicants.

4. Looking to the facts and circumstances of the case, I do not find it a fit case where applicants should be enlarged on bail.

5. In view of above, this application is accordingly rejected.

Order Date :- 12.7.2019"

5. Thereafter, second bail application was filed by applicants-Dinesh Yadav and Ganesh Yadav which was dismissed by this Court for want of prosecution vide order dated 29.07.2020 passed in Criminal Misc. Bail Application No. 15927 of 2020 (Dinesh Yadav and Another Vs. State of U.P.). For ready reference, the order dated 29.07.2020 is extracted hereinunder:-

"This is second bail application.

No one appears on behalf of the applicants to press this bail application even when the case is called out in the revised list.

Sri Manu Raj Singh, learned A.G.A. is present.

The second bail application is dismissed in non-prosecution.

Order Date :- 29.7.2020"

6. Present repeat applications for bail came up for orders on 17.08.2023 and this Court passed the following order:-

"Heard Mr. Vinod Kumar Yadav, the learned counsel for applicant and the learned A.G.A. for State.

This repeat application for bail has been filed by applicant-Pradeep Kumar Yadav seeking his enlargement on bail in Case Crime No.55 of 2017, under Sections 147, 148, 149, 302 IPC, Police Station Holagarh, District Allahabad during the pendency of trial i.e. Sessions Trial No.582 of 2017 (State Vs. Awadhesh Kumar and others) under Sections 147, 148, 149, 302 IPC, Police Station Holagarh, District Allahabad, now pending in the court of Additional District Judge, Court No.15, Allahabad.

Perused the record.

Learned counsel for the applicant contends that applicant is in jail since 17.03.2017. The trial against the applicant came to be registered as Sessions Trial No.582 of 2017 (State Vs. Awadhesh Kumar and others), under Sections 147, 148, 149, 302 IPC, Police Station Holagarh, District Allahabad. In spite of the fact that a period of more than six years have elapsed from the date of commencement of the aforementioned trial, only three prosecution witnesses of fact have been examined up to this stage. Referring to the judgement of Supreme Court in Abdul Rehman Antulay and Others Vs. R.S. Nayak and Another 1992 (1) SCC 225, he submits that right to speedy trial is a fundamental right of an accused. Since the applicant is in jail therefore he cannot be held responsible for the delay in conclusion of the trial therefore, applicant is liable to be enlarged on bail.

Considering the submissions urged by the learned counsel for applicant, the District Judge, Prayagraj is directed to submit a report with regard to the status and progress of trial noted above. The District Judge shall categorically state with regard to number of prosecution witnesses nominated in the charge-sheet, up to this stage how many witnesses have been examined, whether coercive process under the Criminal Procedure Code has been adopted against other prosecution witnesses, if so, its details.

Let the necessary report be submitted to this Court on or before 30.08.2023.

Matter shall re-appear as fresh, on 05.09.2023.

Copy of this order be sent to the District Judge, Allahabad immediately.

Order Date :- 17.8.2023."

7. Subsequent to above order dated 17.08.2023, the Additional District Judge, Court No.-15, Allahabad has sent his report dated 28.08.2023 to this Court. From the perusal of aforesaid report, it is evident that the trial has been delayed on account of

the conduct of prosecution as well as the defence inasmuch as, the defence itself has prayed for adjournment on various occasions. It is on account of above that the examination in chief of PW-3 could not be recorded well within time. The report further states that only formal witnesses now remain to be examined.

8. Learned counsel representing first informant has informed the Court that the statement in chief of PW-4, Doctor has now been recorded.

9. In view of above, the submission urged by the learned counsel for applicants that since the trial is of the year, 2017 but on account of lackadaisical approach of the prosecution, the same has not yet concluded even though a period of almost 6 years has rolled by, is misconceived.

10. In view of above, this Court does not find any good or sufficient ground to enlarge the applicants on bail.

11. As a result, present repeat applications for bail fail and are liable to be rejected.

12. They are accordingly **rejected**.

12. Considering the fact that the trial is of the year, 2017, court below is directed to proceed with the trial with all the expedition without granting any unnecessary adjournment to either of the parties and by fixing three days in a week.

Order Date :- 6.11.2023

Vinay