

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34819 of 2023

Applicant :- Akash

Opposite Party :- State of U.P.

Counsel for Applicant :- Sushil Kumar Pandey

Counsel for Opposite Party :- G.A., Sukhendu Pal Singh

Hon'ble Rajeev Misra, J.

Heard Mr. Sushil Kumar Pandey, the learned counsel for applicant, the learned A.G.A. for State and Mr. Sukhendu Pal Singh, the learned counsel representing first informant.

This application for bail has been filed by applicant Akash seeking his enlargement on bail in Case Crime No.99 of 2023, under Sections 302, 323 IPC, police station Kakrauli, district Muzaffar Nagar, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 29.05.2023, a prompt first information report was lodged by the first informant, namely, Sanjeev Kumar (son of the deceased) and was registered as Case Crime No.99 of 2023, under Sections 323, 304 IPC, police station Kakrauli, district Muzaffar Nagar. In the aforesaid first information report, four persons, namely, Satish; Akash (applicant herein); Bobby and Anshul have been nominated as named accused.

The gravamen of the allegations made in the FIR is to the effect that the named accused armed with wooden stick (Latha) assaulted the brother (Ajay) and father (Soraj Singh) of the first informant on account of which they sustained injuries. The injured Soraj Singh was taken immediately to Birajpur hospital where he was declared dead.

After aforementioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. The inquest (Panchayatnama) of body of the deceased was conducted. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of the deceased was categorized as homicidal and the cause of death of the deceased was said to be injuries inflicted on the body of deceased. Thereafter, the post-mortem of body of the deceased was conducted. In the opinion of the autopsy surgeon, who conducted the autopsy of body of the deceased, the cause of death of the deceased is shock and hemorrhage as a result of ante-mortem injuries. However, the autopsy surgeon found following ante-mortem injuries on the body of the deceased, which is explicit from the recital contained at page 11 of the counter affidavit filed by the learned counsel for first informant :-

"1. Traumatic swelling 8 cm x 3 cm present over (Rt) side eyebrow.

2. Abrasion 1.5 cm x 0.5 cm present over front of forehead 1 cm above root of nose.

3. Abrasion 1.5 cm x 0.5 cm superficial to muscle deep over (Rt) side arm 8 cm above (Rt) elbow joint.

4. Traumatic swelling 12 cm x 6 cm, present over (Rt) side lower part of chest going backward, 10 cm below (Rt) Areola.

5. Abrasion 5 cm x 0.5 cm superficial to muscle deep present over (Rt) side knee joint.

6. Lacerated wound 1.5 cm x 0.5 cm muscle deep present over top of Lt. Toe."

It is apposite to mention here that the autopsy surgeon further found that ribs 8, 9 and 10 on the right side of the deceased were fractured. Liver of the deceased was also found to be lacerated.

During course of investigation, Investigating Officer examined the first informant and other witnesses under Section 161 CrPC. The witnesses so examined have supported the FIR. However, no recovery has been made from any of the named accused. On the basis of above and other material collected by the Investigating Officer, he came to the conclusion that complicity of the named accused is fully established in the crime in question. He, accordingly, submitted police report under Section 173 (2) CrPC i.e. charge-sheet dated 30.07.2023, whereby named accused Satish, Akash and Bobby have been charge-sheeted under Sections 302, 323 IPC, whereas the case of another named accused Anshul has been separated and sent to Juvenile Justice Board as he was found to be a juvenile.

At the very outset, the learned counsel for the applicant contends that named and charge-sheeted co-accused Bobby has already been enlarged on bail by this Court vide order dated 04.08.2023 passed in Criminal Misc. Bail Application No.34196 of 2023 (Bobby Vs. State of U.P.). For ready reference, the order dated 04.08.2023 is reproduced herein-under :-

"By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 99 of 2023 at Police Station Kakrauli District Muzaffar Nagar under Section 302, 323 I.P.C. The applicant is in jail since 30.05.2023.

The bail application of the applicant was rejected by the learned trial court on 19.07.2023.

The following arguments made by Shri Sushil Kumar Pandey, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Sukhendu Pal Singh, learned counsel assisted by Shri Kartikeya Shukla, learned counsel for the informant and Shri Chandan Agrawal, learned AGA from the record, entitle the applicant for grant of bail:

1. The applicant has not been identified as one of the principal offenders who inflicted fatal injuries on the person of the deceased Swaraj.

2. As per the prosecution case set out in the F.I.R. a vague and general role has been assigned to the applicant in the assault.

3. Case of the applicant is distinguishable from that of the principal offenders Satish, Akash and Anshul.

4. No incriminating article which connects with the crime has been recovered from the applicant.

5. Prosecution evidence does not connect the applicant with the offence.

6. The applicant does not have any criminal history apart from this case.

7. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

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 applicant- Bobby 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 below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

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

It is then contended by the learned counsel for applicant that general role has been assigned to all the accused. On the above premise, he submits that though applicant is a named as well as charge-sheeted accused yet he is liable to be enlarged on bail.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in custody since 10.07.2023. As such, he has undergone more than three months of incarceration. 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 the trial. The police report under Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant. He, therefore, contends 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.

Per contra, the learned A.G.A. and the learned counsel representing first informant have opposed the prayer for bail. They submit that the case of the present applicant and co-accused Satish is clearly distinguishable from the named and charge-sheeted but bailed out co-accused Bobby. Co-accused Bobby has not been assigned the role of

assaulting the deceased. As such, the case of present applicant Akash and co-accused Satish is clearly distinguishable from co-accused Body therefore, no parity can be claimed by the present applicant with the co-accused Bobdy who has been enlarged on bail by this Court. On the above premise, they contend that no sympathy be shown by this Court in favour of applicant.

When confronted with above, the learned counsel for applicant could not overcome the same.

Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that the case of the named/charge-sheeted but bailed out co-accused Bobby is clearly distinguishable from other two named/charge-sheeted accused Akash (applicant herein) and Satish, inasmuch as, the said co-accused has not been assigned the role of assault upon the deceased and the injured as such the case of present applicant is clearly distinguishable from above-mentioned named/charge-sheeted but bailed out co-accused, in view of above no parity can be claimed by the applicant with the bail order of co-accused Bobby, the medical evidence clearly goes to show that the deceased has sustained several injuries on his body, the criminality committed by the named/charge-sheeted accused except co-accused Bobby is joint and common therefore, the same is incapable of separation and segregation, as such, no exception can be carved out in the case of present applicant therefore, irrespective of the submissions urged by the learned counsel for applicant in support of the present application for bail, this Court finds that no good and sufficient ground is made out to enlarge the applicant on bail.

The application for bail thus fails and is liable to be rejected.

It is accordingly **rejected**.

Order Date :- 19.10.2023.

Rks.