

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35298 of 2023

Applicant :- Sumit

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Bahadur Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. I.S. Singh, Advocate, holding brief of Mr. Ram Bahadur Singh, the learned counsel for applicant and the learned A.G.A. for State.

2. This application for bail has been filed by applicant-Sumit seeking his enlargement on bail in Case Crime No. 74 of 2023, under Section 302 IPC, Police Station Syana, District Bulandshahar, during the pendency of trial.

3. Record shows that in respect of an incident which is alleged to have occurred on 08.03.2023, a prompt F.I.R. dated 08.03.2023 was lodged by first informant namely - Mukesh (father of the deceased) and was registered as Case Crime No. 0074 of 2023, under Section 302 IPC, Police Station Syana, District Bulandshahar. In the aforesaid F.I.R., one Rohit has been nominated as solitary named accused.

4. The gravamen of the allegations made in the F.I.R. is to the effect that named accused Rohit brutally assaulted the son of first informant namely Ankit as a result of which he died.

5. After aforementioned FIR was lodged, post-mortem of the body of the deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the body of deceased, found following ante-mortem injuries on the body of deceased :-

"Ante-mortem injuries :-

1. Step wound of size 3 cm x 1 cm x chest cavity deep +ve at Rt side chest 4 cm from Lt nipple at 9 O'clock position. On exploration, Heart found lacerated & about 400 ml clotted blood at pleural cavity.

2. IW of size 10 cm x 0.5 cm x muscle deep +ve on front of neck, 6 cm below of chin.

3. IW 2 x 1 x muscle deep +ve at Rt lateral chest.

4. IW 1 x 1 x muscle deep present at Lt lateral chest measuring 2 cm below injury no.3.

5. Linear abrasion of 2 cm, that Rt fore arm.

6. IW 2 x 1 cm x muscle deep, that Rt chest.

7. Multiple IW of size 2 x 1 cm to 1 x 1 cm (5 inch) that Lt shoulder & scalper region."

6. In the opinion of Autopsy Surgeon, the cause of death of the deceased was shock and hemorrhage as a result of ante-mortem injuries.

7. Learned counsel for the applicant contends that applicant is innocent. Applicant is not named in the FIR. Subsequent to the aforesaid FIR giving rise to the present application for bail, first statement of the first informant namely Mukesh (father of the deceased) was recorded under Section 161 Cr.P.C. on 08.03.2021, copy of which is on record at pages 32/33 of the paper book. The first informant in his aforesaid statement has not implicated the applicant in the crime in question. Subsequently, after expiry of a period of 2 years and 1 day from the date of recording first statement, his second statement (Bayan Mazid) was recorded on 09.03.2023, copy of which is on record at page 36 of the paper book. It is in the second statement of the first informant that complicity of present applicant is alleged in the crime in question.

8. With reference to above, the learned counsel for applicant submits that though applicant is not named in the FIR but a charge-sheeted accused inasmuch as, the charge-sheet has been submitted against applicant on 22.04.2023 yet the applicant is liable to be enlarged on bail. No explanation has been offered with regard to the omission of name of the present applicant in the first statement of the first informant recorded under Section 161 CrPC. As such, applicant has been implicated in the crime in question after more than 2 years and on afterthought.

9. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 09.03.2023. As such, he has undergone more than 7

and 1/2 months of incarceration. 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 applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant 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.

10. *Per contra*, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since the applicant is a charge-sheeted accused, therefore, no indulgence be granted by this Court in favour of applicant. The deceased was a young boy aged about 15 years. He sustained as many as 7 injuries on his person. There is nothing on record to infer false or malicious prosecution of the applicant in the crime in question. As such, no sympathy be shown by this Court in favour of applicant. 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.

11. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, complicity of the accused, accusations made, nature and gravity of offence and coupled with the fact that the applicant is not named in the FIR, the FIR was lodged by the first informant/father of the deceased upon alleged disclosure made by the deceased to him, however, the applicant was not named in the FIR, the first informant has not implicated the applicant in the crime in question in his first statement recorded under Section 161 CrPC, the complicity of applicant in the crime in question has surfaced in the second statement (Bayan Mazid), which was recorded after expiry of a considerable period from the first statement of the first informant, the complicity of the applicant in the crime in question that has emerged in the subsequent statement of the first informant is not worthy of credit, inasmuch as, the first informant is not an eye-witness of the occurrence and the FIR was lodged by him as per the disclosure alleged to have been made by the injured/deceased himself, the clean antecedents of the applicant, the period of incarceration undergone, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of

applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, the applicant has made out a case for bail.

12. Accordingly, the bail application is **allowed**.

13. Let the **applicant-Sumit**, be released on bail in the aforesaid case crime number 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) 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.

14. 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 :- 28.10.2023.

Vinay