

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35942 of 2023

Applicant :- Jheenmati

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjeev Kumar, Puja Chauhan

Counsel for Opposite Party :- G.A., Rahul Kumar

and

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41188 of 2023

Applicant :- Radhna

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjeev Kumar, Puja Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Two supplementary affidavits filed by learned counsel for applicants in Court today are taken on record.
2. Heard Mr. Sanjeev Kumar alongwith Smt. Puja Chauhan, the learned counsel for applicants-Jheenmati and Radhna and the learned A.G.A. for State.
3. Perused the Court.
4. These applications for bail have been filed by applicants-Jheenmati and Radhna seeking their enlargement on bail in Case Crime No. 178 of 2023 under Sections 302, 504 I.P.C. and Sections 4/25 Arms Act, Police Station-Bansi, District-Siddharthnagar during the pendency of trial.
5. Record shows that in respect of an incident, which is alleged to

have occurred on 23.06.2023, a prompt F.I.R. dated 23.06.2023, was lodged by first informant-Vijay Sahani (son of the deceased) and was registered as Case Crime No. 178 of 2023 under Sections 302, 504 I.P.C., Police Station-Bansi, District- Siddharthnagar. In the aforesaid F. I.R., four persons namely Vishal Sahani, Phagu, Jheenmati and Radhika (both applicants herein), have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that named accused Vishal Shahni and Radhika surrounded the father of the first informant and thereafter, named accused Vishal Sahani caused stabbed injury on the person of the father of the first informant on account of which, he ultimately died.

7. After aforementioned F.I.R. was lodged, the inquest (Panchnama) of the body of deceased was conducted on 23.06.2023. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of the deceased was categorized as homicidal and cause of death was said to be stabbed injury sustained by the deceased. Thereafter, post-mortem of the body of the deceased was conducted on the same day. In the opinion of the Autopsy Surgeon who conducted autopsy of the body of the deceased, the cause of death of deceased is haemorrhagic shock as a result of ante-mortem injury. The Autopsy Surgeon, found following ante-mortem injuries on the body of the deceased:

I. 01 cm. x 205 cm (Depth) sharp wounds on left upper chest 3.00 cm below middle half of it clavicle directed up to dountowards, medial side of body.

II. 6.00x 1.00x 105 cm on crerscent shape sharp injury on it, tempera parietal area 2.00 cm above left pine 3 up to midline head.

8. During course of investigation, Investigating Officer examined first informant and other witnesses namely, Sukai, Phagu, Dr. Punit

Kumar Srivastava, Smt. Kusum, Km. Neetu and Km. Ritu. However none of the witnesses so examined are the eye witness of the occurrence. On the basis of above, Investigating Officer, arrested the name accused Vishal Sahani, Jheenmati and Radhna. On the pointing of co-accused Vishal Sahani the weapon of assault i.e knife was recovered. On the basis of above and other material collected by Investigating Officer during the course of investigation, he came to the conclusion that complicity of only three of the named accused namely Vishal Sahani, Jheenmati and Radhna is established in the crime in question. Accordingly, Investigating Officer submitted the charge sheet dated 29.07.2023 whereby all the three named accused have been charge sheeted under Sections 302, 504 I.P.C. and Sections 4/25 Arms Act whereas named accuse Phagu has been exculpated.

9. Learned counsel for applicants contends that though the applicants are named as well as charge sheeted accused yet they are liable to be enlarged on bail. Attention of the Court was invited to the provisions contained in proviso to Section 437 Cr.P.C. and on basis thereof, he submits that since both the applicants are ladies therefore they are liable to be enlarged on bail. It is next contended by learned counsel for applicants that as investigation made by Investigating Officer, no adverse material has emerged against applicants. The weapon of assault i.e knife has been recovered on the pointing of named and charged co-accused Vishal Sahani. No recovery has been made on the pointing of applicants. Applicants have not been charge sheeted under Sections 149 and 34 I.P.C. Role of causing stab wounds to the deceased has been attributed to co-accused Vishal Sahani as per confessional statement of aforesaid accused. Applicants are not said to be armed with any deadly weapon. He therefore contends that case of

present applicants is clearly distinguishable from named and charge-sheeted co-accused Vishal. As such, applicants are liable to be enlarged on bail.

10. Even otherwise applicants are women of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicants are in custody since 24.06.2023. As such they have undergone more than four months of incarceration. Police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, therefore the entire evidence sought to be relied upon by the prosecution against applicants stands crystallised. Upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. On the above premise, the learned counsel for applicants thus submits that applicants are liable to be enlarged on bail. In case applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

11. Per contra, the learned A.G.A. for State has opposed the prayer for bail. He submits that since the applicants are named as well as charge sheeted accused, therefore, they do not deserve any indulgence by this Court. However, he could not dislodge the factual and legal submissions urged by learned counsel for applicants with reference to the record at this stage.

12. Having heard the learned counsel for applicant, the learned A.G.A. for State, 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 since applicants are ladies therefore they are entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C, the recovery of weapon of assault i.e. knife has been made on the

pointing of named/charge sheeted accused Vishal Sahani as per confessional statement of aforesaid accused, that fatal stab injuries were inflicted by co-accused Vishal Sahani, as such, case of present applicant is clearly distinguishable from name and charge sheeted co-accused Vishal Sahani,. no recovery has been made from applicants, applicants have not been charge sheeted under Sections 149 and 34 I.P.C, the applicants are not said to be armed with any deadly weapon, clean antecedents of applicant, period of incarceration undergone, the police report in terms of Section 173 (2) Cr.P.C. has already been submitted therefore the entire evidence sought to be relied upon by the prosecution against applicants stand crystallised, yet in spite of above the learned A.G.A. could not point out any such circumstance from record necessitating the custodial arrest of the applicant during 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 expressing any opinion on the merits of the case, applicant has made out a case for bail.

13. Accordingly, present applications for bail are **allowed**.

14. Let the applicants-Jheenmati and Radhna, involved in aforesaid case crime number be released on bail on their 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) Applicants will not tamper with prosecution evidence.

(ii) Applicants 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) Applicants will not indulge in any unlawful activities.

(iv) Applicants will not misuse the liberty of bail in any manner whatsoever.

15. 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 applicants and send them to prison.

Order Date :- 30.10.2023

YK