

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41428 of 2023

Applicant :- Pramod Kevat

Opposite Party :- State of U.P.

Counsel for Applicant :- Jitendra Prasad Mishra,Prakhar Kumar Kushwaha

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Jitendra Prasad Mishra, the learned counsel for applicant and the learned A.G.A. for State.
2. Perused the record.
3. This application for bail has been filed by applicant-Pramod Kevat, seeking his enlargement on bail in Case Crime No. 71 of 2021, under Sections 302, 201 IPC, Police Station-Naraini, District-Banda during the pendency of trial.
4. Record shows that in respect of an incident, which is alleged to have occurred on 11.07.2021, a prompt FIR dated 11.07.2021 was lodged by first informant-Santosh Kumar Mishra (mama of the deceased) and was registered as Case Crime No. 71 of 2021, under Sections 302, 201 IPC, Police Station-Naraini, District-Banda. In the aforesaid FIR, an unknown person has been arraigned as solitary accused.
5. The gravamen of the allegations made in the FIR is to the effect that an unknown person caused the murder of Bablu (Bhanja of the first informant) by beheading him. The FIR further records that remaining body of deceased was recovered from a well situate nearby, the place from where the head of the deceased was recovered.
6. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. He first recovered/retrieved the body of deceased as well as the head of deceased. Thereafter, the inquest (*Panchayatnama*) of the body of deceased was conducted. In the opinion of the witnesses of inquest (*Panch witnesses*), the nature of death of deceased was categorized as homicidal and the cause of death of deceased was specified as injury caused by a sharp edge weapon on the neck of deceased. Subsequent to above, the post mortem of the body of deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the

body of deceased, opined that the cause of death of deceased is Shock and Hemorrhage as a result of ante-mortem injuries. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. Decapitated body present in two parts.

2. A incised wound of size 26 x 0.5 x bone deep at lateral side of neck, 7 cm below the Rt. ear.

3. A I/W of size 9 cm x 3 cm ms deep at tip of Left shouder.

4. A abrasion of size 6 cm x 3 cm at Left knee Jt.

5. A abrasion of size 5 cm x 3 cm at Rt. knee Jt.

6. Margin of I/W is sharp & clear.

7. Face bloated, Abdomen distended."

7. During course of investigation, Investigating Officer examined first informant namely Santosh Kumar Mishra. This witness in his first and second statement under Section 161 Cr.P.C. has expressed suspicion against one Chunnu for committing the crime in question. Similar statement has been made by another witness namely Rameshwar Mali. During course of investigation, Investigating Officer examined other witnesses also under Section 161 Cr.P.C. After expiry of a period of 13 months from the date of occurrence, one witness Rohit Shukla was examined. This witness in his statement came out with the theory of last seen against applicant. The motive that has emerged against applicant for committing the crime in question is said to be that the deceased was having bad eyes on the ladies of the family of the applicant. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of applicant is fully established in the crime in question. He, accordingly, submitted the charge sheet dated 28.10.2022 whereby applicant Pramod Kevat and Keshav Kevat have been charge sheeted under Sections 302, 201 IPC.

8. Learned counsel for applicant contends that though applicant is not named but charge sheeted accused yet he is liable to be enlarged on bail. Present case is a case of circumstantial evidence, therefore, there is no eye witness of the occurrence. The complicity of an accused in a case based upon circumstance evidence has to be inferred in accordance with the parameters laid down by the Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra AIR 1984 SC 1622 (Paragraph 152)**. However, up to this stage, none of the parameters laid down by the Apex Court in aforementioned judgment are satisfied against present applicant. The first informant in his first and second statement recorded

under Section 161 Cr.P.C. has nominated one Chunnu as the precipitater of the crime. Subsequently in his third statement under Section 161 Cr.P.C, the first informant has taken a summer shot and now expressed suspicion against present applicant and co-accused Keshav Kevat and Shiv Ranjan (his cousin brother). With reference to above, the learned counsel for applicant submits that in view of the inherent inconsistency in the statements of the first informant, no credence can be attached to the same. Subsequently, the statement of Chunnu was recorded under Section 161 Cr.P.C. on 18.04.2022. However, this witness/accused has completely denied his complicity in the crime in question. Similarly, the statement of another witness namely Rameshwar Mali has supported the first and second statements of the first informant but has ultimately not supported the third statement of the first informant. The theory of last seen against the applicant has emerged in the statement of one Rohit Shukla. Referring to following two judgments of the Supreme Court (1) ***Jaswant Gir Vs. State of Punjab (2005) 12 SCC 438*** and (2) ***Jabir Vs. State of Uttarakhand, 2023 SCC OnLine SC 32***, the learned counsel for applicant contends that no conviction can be maintained on the basis of last seen. The motive that has emerged against applicant for committing the crime in question is by itself not so sufficient so as to infer the guilt of the applicant. Referring to the judgment of the Supreme Court in ***Nandu Singh Vs. State of M.P., 2022 SCC OnLine SC 1454***, the learned counsel for applicant contends that motive plays an important role in the link of circumstances in a case based on circumstantial evidence. Since there is no strong motive has emerged against applicant, therefore, applicant is liable to be enlarged on bail.

9. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 06.08.2022. As such, he has undergone more than 1 year and 3 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. 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. On the above premise, he 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 opposed the prayer for bail. He submits that since applicant is a charge sheeted accused, therefore, he does not deserve any indulgence by this Court.

However, the learned A.G.A. 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 record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that present case is a case of circumstantial evidence, therefore, there is no eye witness of the occurrence, the guilt of an accused in a case based on circumstantial evidence has to be inferred in accordance with the parameters laid down in the case of **Sharad Birdhichand Sarda (Supra)**, however, up to this stage, none of the parameters laid down by the Apex Court in aforementioned judgment are satisfied against applicant, no strong motive has emerged against applicant to commit the crime in question, the theory of last seen as per the statement of one witness Rohit Shukla examined under Section 161 Cr.P.C. cannot be relied upon to infer the guilt of an accused inasmuch as, no conviction can be based only on the basis of last seen as per the judgments of the Supreme Court referred to above, the first informant in his first and second statement recorded under Section 161 Cr.P.C. has nominated one Chunnu as the precipitater of the crime, subsequently in his third statement under Section 161 Cr.P.C, the first informant has taken a summer shot and now expressed suspicion against present applicant and co-accused Keshav Kevat and Shiv Ranjan (his cousin brother), in view of the inherent inconsistency in the statements of the first informant, no credence can be attached to the same, the statement of another witness namely Rameshwar Mali has supported the first and second statements of the first informant but has ultimately not supported the third statement of the first informant, the motive that has emerged against applicant for committing the crime in question is by itself not so sufficient so as to infer the guilt of the applicant, as per the judgment of the Supreme Court in **Nandu Singh (Supra)**, motive plays an important role in the link of circumstances in a case based on circumstantial evidence, since there is no strong motive has emerged against applicant, therefore, applicant is liable to be enlarged on bail, the clean antecedents of applicant, the 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 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, applicant has made out a case for bail.

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

13. Let the **applicant-Pramod Kevat**, 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 :- 28.11.2023

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