

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36631 of 2023

Applicant :- Rinku @ Virendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Mrityunjay Dwivedi

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34032 of 2023

Applicant :- Tota Ram @ Tinku And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Mrityunjay Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Mrityunjay Dwivedi, the learned counsel for applicants-Rinku @ Virendra, Totaram @ Tinku and Hema and the learned A.G.A. for State.

2. Perused the record.

3. These applications for bail have been filed by applicants-Rinku @ Virendra, Totaram @ Tinku and Hema, seeking their enlargement on bail in Case Crime No. 35 of 2023, under Sections 302/34, 120-B, 201 IPC, Police Station-Tappal, District-Aligarh during the pendency of trial.

4. It is apposite to mention here that the applicants are the brother-in-laws and wife of deceased.

5. Record shows that an FIR dated 25.01.2023 was lodged by Ranveer Singh (Father of the deceased) and was registered as Case Crime No. 35 of 2023, under Sections 302, 201, 34 IPC, Police Station-Tappal, District-Aligarh. In the aforesaid FIR, 4 persons namely - (1) Veerpal (father-in-law), (2) Rinku, (3) Totaram and (4) Hema have been nominated as named accused.

6. The gravamen of the allegations made in the FIR is to the effect that Pramod Kumar (son of the first informant) went missing and therefore, a missing person report was lodged by the first informant on 22.01.2023. Subsequently, on 25.01.2023, the dead body of the son of the first informant was recovered. The FIR further records that the first informant has every apprehension to believe that his son has been put to death by the named accused.

7. 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. The inquest (Panchayatnama) of the body of deceased was conducted on 25.01.2023. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as homicidal. Thereafter, the post mortem of the body of deceased was conducted on the same day i.e. 25.01.2023. The Autopsy Surgeon, who conducted autopsy of the body of deceased, opined that the cause of death of the deceased is Comma as a result of ante-mortem head injury. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

" A Laceration wound of size 1.5 cm x 1 cm present on right side of forehead some above right eyebrow."

8. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. On the basis of above, three of the named accused i.e. applicants herein arrested. On the pointing of Rinku, the wooden handle of the digging stick (Fawda) was recovered. However, there was no blood stain on the said article. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of all the named accused is established in the crime in question. He, accordingly, submitted the charge sheet dated 03.04.2023 whereby all the named accused have been charge sheeted under Sections 302/34, 120-B, 201 IPC.

9. At the very outset, the learned counsel for applicant submits that named/charge sheeted co-accused Veerpal @ Veeru had already been enlarged on bail by this Court vide order dated 09.06.2023 passed in Criminal Misc. Bail Application No. 25034 of 2023 (Veerpal @ Veeru Vs. State of U.P.). For ready reference, the same is reproduced herein under:-

"1. Heard learned counsel for the applicant as well as learned AGA for the State and perused the material placed on record.

2. The instant bail application has been filed on behalf of the applicant, Veerpal @ Veeru, with a prayer to release him on bail in Case Crime No.35 of 2023, under Sections 302/34, 120B, 201 IPC, Police Station Tappal, District-Aligarh, during pendency of trial.

3. Learned counsel for the applicant has submitted that allegations against the applicant and other co-accused are that they have committed the murder of one Pramod, who is son-in-law of the applicant. It is further submitted that during the course of investigation, evidence of last seen has been found against co-accused Rinku, who was brother-in-law (sala) of the deceased. It is also submitted that one lacerated wound on right side of forehead of the deceased has been found and it is not known who was the author of the aforesaid injury. It is further submitted that on 25.1.2023 recovery of the dead-body was made from the pond of Jartauli Mod. The applicant has been falsely implicated in the instant case. He is languishing in jail since 02.02.2023, having no criminal antecedent. In case, the applicant is released on bail, he will not misuse the liberty of bail.

4. Per contra learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserves any indulgence. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

5. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant; keeping in view uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022 and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime be released on bail 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 that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order

to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the Court on the date fixed in such proclamation then the Trial Court shall initiate proceedings against him in accordance with law under Section 174-A of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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 him in accordance with law.

6. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

7. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted."

9. On the above premise, the learned counsel for applicant contends that the case of present applicants are similar and identical to aforementioned named/charge sheeted co-accused Veerpal @ Veeru. There is no such distinguishing feature on the basis of which, the case of present applicants could be so distinguished from aforementioned named/charge sheeted co-accused so as to deny them bail. He, therefore, submits that in view of above and for the facts and reasons recorded in the bail order of co-accused Veerpal @ Veeru, applicants are also liable to be enlarged on bail on the ground of parity.

10. Moreover, the only incriminating circumstance that has emerged against the applicants is the recovery of the wooden handle of the digging stick (Fawda) on the pointing of one of the named accused Rinku. There is no other recovery from other applicants. No strong motive to commit the crime in question that has emerged against applicants either. As per the material collected by the Investigating Officer, it cannot be inferred that the applicants had any animus to commit the crime in question. Apart from above, the other incriminating circumstance that has emerged against the applicants is the statement of the witness-Devendra, who in his statement under Section 161 Cr.P.C. has stated that accused were seen together along with deceased at 08:00 PM on 23.01.2023. The veracity of the said statement has been contradicted with reference to the post mortem report of the deceased wherein the Doctor has opined that the death of the deceased has occurred 3 to 4 days ago. The post mortem of the body of the deceased was conducted on 25.01.2023, therefore, the aforesaid calculation, the deceased had died on 21/22.01.2023. He, therefore, submits that no credibility or reliability can be attached

to the statement of the witness-Devendra.

12. Learned counsel for applicants contends that though applicants are named as well as charge sheeted accused yet they are liable to be enlarged on bail. Present case is a case of circumstantial evidence and therefore, there is no eye witness of the occurrence. It is then contended that complicity of an accused in a case based on circumstantial 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 to infer the guilt of an accused in a case based upon circumstantial evidence are satisfied against applicant. It is thus urged that applicants are liable to be enlarged on bail.

13. Even otherwise, applicants are men of clean antecedents inasmuch as, they have no criminal history to their credit except the present one. Applicants are in jail since 02.02.2023. As such, they have undergone more than 8 and 1/2 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 applicants stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicants during the pendency of trial. On the above premise, he submits that applicants are liable to be enlarged on bail. In case, the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

14. Per contra, the learned A.G.A. has opposed the prayer for bail. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

15. 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 similarly situate and circumstanced co-accused have already been enlarged on bail, the learned A.G.A. could not point out any such circumstance from the record differentiating the case of present applicants from named/charge sheeted co-accused, therefore, applicants have made out a case for bail on the ground of parity, 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 applicants stands crystallized, yet in spite of above, the learned A.G.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the two incriminating circumstances that have emerged against the applicants during the course of investigation are not so sufficient so as to infer the guilt of applicants established in the crime in question, 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, applicants have made out a case for bail.

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

17. Let the **applicants-Rinku @ Virendra, Totaram @ Tinku and Hema**, be released on bail in the aforesaid case crime number 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) 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.

18. However, it is made clear that any wilful violation of above conditions by the applicants, shall have serious repercussion on their 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 :- 19.10.2023

Vinay