

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43313 of 2022

Applicant :- Sangita Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinod Pandey

Counsel for Opposite Party :- G.A.,Amarendra Rai,Arvind Prabodh Dubey

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39575 of 2023

Applicant :- Anchal Pathak

Opposite Party :- State of U.P.

Counsel for Applicant :- Pulak Ganguly

Counsel for Opposite Party :- G.A.,Amarendra Rai,Shashi Kant Pandey

Hon'ble Rajeev Misra,J.

Heard Mr. Pulak Ganguly, the learned counsel for applicants, the learned A.G.A. for State and Mr. Amrendra Rai, the learned counsel representing first informant.

Perused the record.

These applications for bail have been filed by applicants- Sangita Devi and Anchal Pathak seeking their enlargement on bail in Case Crime No. 101 of 2022, under Sections 147, 148, 149, 323, 504, 506, 452, 302, 307 IPC, Police Station- Rampur Karkhana, District Deoria, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 9.4.2022 a belated F.I.R. dated 11.4.2024 was lodged by first informant Upendra Kumar Pathak and was registered as Case Crime No. 101 of 2022, under Sections 147, 148, 149, 323, 504, 506, 452, 302, 307 IPC, Police Station- Rampur Karkhana, District Deoria. In the aforesaid F.I.R. eleven persons namely, Sudhish Pathak, Sunil, Abhishek, Pankaj, Tanmay,

Priyanka, Kajal, Anchal, Sangeeta Devi, Pushpa Devi, Riya have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused formed an unlawful assembly and assaulted the father of first informant namely, Hridayanand. On account of which he sustained head injury, whereas the first informant and his brother Vinay also sustained injuries on his person.

Subsequent to aforesaid F.I.R., one of the injured i.e. father of first informant died. Accordingly the case was converted under section 302 IPC. Thereafter the post mortem of the body of the deceased was conducted. In the opinion of autopsy surgeon, who conducted autopsy of the body of deceased the cause of death of deceased was coma as a result of ante-mortem injury. The Doctor found following ante-mortem injuries on the body of deceased:

"1. Stitched wound size 5 cm over right side of back of head .. of stitch 5 on which skin under ... present.

2. Stitched wound size 4 cm over left side of forehead, no of stitched 5 on within skin underwith hemmatoma present on opening skull under stitch.

3. Multiple abrasion on left head, 5 cm x 4 cm.

4. Lacerated wound of size x 1.5 cm over left hand palm."

During course of investigation, Investigating Officer examined first informant and other witnesses under section 161 Cr.P.C. Witnesses so examined have supported the F.I.R.

Learned counsel for applicants contends that named accused Sunil Pathak has already been enlarged on bail by this Court vide order dated 22.2.2023, passed in Criminal Misc. Bail Application No. 4529 of 2023 (Sunil Pathak Vs. State of U.P.). For ready reference, same is reproduced herein under:

"Heard Sri Vinod Pandey. learned counsel for the applicant, learned counsel for the State, Sri Amarendra Rai, learned counsel for the informant and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Sunil Pathak, seeking enlargement on bail during trial in connection with Case Crime No. 101 of 2022, under Sections 147, 148, 149, 323, 504, 506, 452, 302, 307 I.P.C. registered at P.S.- Rampur Karkhana, District- Deoria.

The submission advanced by learned counsel for the applicant is that the applicant is innocent and has been falsely implicated in the present case

due to ulterior motive. According to prosecution version, the accused Sudhish had a Farsa and Lathi, Abhishek Pathak had Farsa, Pankaj (Juvenile) had a Lathi, while the remaining accused had no weapon. In the present case the enmity between the parties is established but no weapon as well as well as no specific role has been assigned to the applicant. The applicant has no criminal history, he was living abroad and few days ago of this incident he had come to home. According to post mortem examination report of the deceased, the cause of death is coma due to antemortem injuries. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It is further contended by learned counsel for the applicant that the applicant is languishing in jail since 07.05.2022 having no criminal history.

Per contra, learned AGA for the State as well as learned counsel for the informant have opposed the prayer for bail.

After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

Let the applicant- Sunil Pathak, be released on bail in the aforesaid case crime number on furnishing a personal bond and two heavy 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant 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) The applicant shall file an undertaking to the effect that he 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, in accordance with law, under section 174-A I.P.C.

(V) 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 him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

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 and send the applicant to prison.

The bail application is allowed. "

On the aforesaid premise, learned counsel for applicants contends that case of presents applicants are similar and identical to that aforesaid co-accused who has already been enlarged on bail. There is no such distinguishing feature on the basis of which case of present applicants can be so distinguished from aforesaid co-accused so as to deny them bail. He, therefore, contends that in view of above and for the facts and circumstances, recorded in the aforementioned bail order, present applicants are also liable to be enlarged on bail on the ground of parity. Referring to the provisions contained in proviso to section 437 Cr.P.C. he submits that applicants being ladies are liable to be enlarged on bail.

Even otherwise, applicants are women of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicant- Sangita Devi is in jail since 4.7.2022 whereas, applicant-Anchal Pathak is in jail since 18.7.2023. As such, they have undergone sufficient period of incarceration. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. It is thus urged 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.

Per contra, the learned A.G.A. and learned counsel for first informant have opposed the prayer for bail. They submit that since applicants are named as well as charge sheeted accused, therefore they do not deserve any indulgence by this Court. Since criminality committed by charge sheeted accused including

applicants are joint and common, therefore, same cannot be separated or sagggregated. As such no exception can be carved out in the case of applicants. Therefore, no sympathy be shown by this Court in favour of applicants. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicants, with reference to the record at this stage.

Having heard the learned counsel for applicants, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicants, accusation made coupled with the fact that co-accused Sunil Pahtak has already been enlarged on bail, the learned A.G.A and the learned counsel for first informant could not point out any such circumstance from the record distinguishing the case of present applicants from aforementioned co-accused Sunil Pathak so as to deny them bail, applicants being ladies therefore they are entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., applicants cannot be said to be the author of fatal injuries sustained by the deceased on his head as applicants are not said to be armed with any weapon, clean antecedents of applicants, 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 remains crystalized yet the learned A.G.A. and the learned counsel for first informant could not point out any such circumstance from the record, necessitating the custodial arrest of applicants during the pendency of trial, the judgement of the Suprme Court in **Sumit Subhaschandra Gangwal and another Vs. The State of Maharashtra and Another, 2023 Live Law (SC) 373, (para-5)** therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant, but without making any comment on the merits of the case, the applicants have made out a case for bail.

Accordingly the bail applications are **allowed**.

Let the applicants- **Sangita Devi** and **Anchal Pathak** 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 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her 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 :- 20.11.2023

Arshad