

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37207 of 2023

Applicant :- Shiv Prasann Chaubey @ Vikas Chaubey

Opposite Party :- State of U.P.

Counsel for Applicant :- Anand Priya Singh

Counsel for Opposite Party :- G.A.,Anil Kumar Chaudhary

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37325 of 2023

Applicant :- Santu Gond

Opposite Party :- State Of U. P. Thr. Prin. Secy. Home Govt. Of U. P. Luck

Counsel for Applicant :- Shitlesh Pandey

Counsel for Opposite Party :- G.A.,Pavan Kumar Srivastava

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41528 of 2023

Applicant :- Aman Yadav

Opposite Party :- State Of U.P. Thr. Prin. Secy. (Home) Govt. Of U.P. At Luck

Counsel for Applicant :- Shitlesh Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Anand Priya Singh, the learned counsel for applicant-Shiv Prasann Chaubey @ Vikas Chaubey, Mr. Raghuraj Singh Kushwaha, Advocate holding brief of Mr. Shitlesh Pandey for applicants Santu Gond and Aman Yadav, the learned A.G.A. for State and Mr. Anil Kumar Chaudhary, the learned counsel representing first informant.

These applications for bail has been filed by applicants Prasann Chaubey @ Vikas Chaubey, Santu Gond and Aman Yadav seeking their enlargement on bail in Case Crime No.176 of 2023, under Sections 302, 120-B, 34 IPC, police station Sarai Lakhansi, district Mau, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 26.05.2023, a prompt first information report dated 26.05.2023 was lodged by first informant, namely, Manoj Chauhan (brother of the deceased) and was

registered as Case Crime No.0176 of 2023, under Section 302 IPC, police station Sarai Lakhansi, district Mau. In the aforesaid F.I.R., one person namely, Sonu Gond has been nominated as named accused, whereas one un-known person has also been arraigned as an accused.

The gravamen of the allegations made in the FIR is to the effect that the named accused Sonu Gond is alleged to have caused the death of brother of the first informant by causing gunshot injury upon him.

It is apposite to mention here that prior to the lodging of the aforementioned first information report, inquest (Panchayatnama) of body of the deceased was conducted on 26.05.2023. 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 the deceased was said to be gunshot ante-mortem injury as well as head injury sustained by the deceased. Thereafter, the post mortem of body of the deceased was conducted. In the opinion of the autopsy surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was Coma and hemorrhagic shock as a result of ante-mortem firearm injury. The autopsy surgeon found following ante-mortem injuries on the body of deceased, which is explicit from the recital contained at page 32 of the paper book :-

"1. Fire arm wound of entry of size 01 x 01 cm oval shaped over left side of chest 2.5 cm below left nipple. Blackening, tattooing singeing around wound area is present maegirs invoted.

2. Wound of exit of size 01 x 01 oval shaped over Rt side of back, 20 cm below from upper shoulder joint. Margins are everted. After opening theart punctured, Rt line punctured, Rt Libs 43 around 01.5 clotted blood is present in thsaac cavity. Probe is passive through and through.

3. Lacerated wound of 07 x 02 cm on occipital region. On cutting and opening skull brain remember haeopital present.

4. Abrasion of 04 x 02 cm on Rt side of face"

It is after aforesaid proceedings had been completed that aforementioned FIR was lodged. Investigating Officer accordingly proceeded with the statutory investigation of aforementioned case crime number. During course of investigation, Investigating Officer examined first informant and other witnesses, namely, Manri Devi (mother) and Anita (wife) of the deceased under Section 161 CrPC. Thereafter the second statement of the first informant was recorded after one week. The complicity of applicants Shiv Prasann Chaubey @ Vikas Chaubey, Sonu Gond and Aman Yadav emerged in the second statement of the first informant. On the basis of above and other material collected by the Investigating Officer during the course of investigation, he came to the

conclusion that the complicity of applicants is fully established in the crime in question. He, accordingly, submitted police report under Section 173 (2) CrPC i.e. charge-sheet dated 11.09.2023, whereby applicants have been charge-sheeted under Sections 302, 120-B, 34 IPC.

Learned counsel for applicants submit that though applicants are not named but charge-sheeted accused yet they are liable to be enlarged on bail. The present case is a case of circumstantial evidence and, therefore, there is no eye-witness of the occurrence. According to the learned counsel for applicant, the complicity of an accused in a case based on circumstantial evidence is to be judged in the light of parameters laid down by the Supreme Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra AIR 1984 SC 1622**. However, in the present case none of the parameters laid down in aforementioned judgement are satisfied against the present applicants up to this stage. The complicity of the applicants has emerged in the crime in question in the subsequent statement of the first informant recorded under Section 161 CrPC after more than seven days from the previous statement under Section 161 CrPC. As per the said statement, accused Shiv Prasann Chaubey is said to have caused the crime in question along with named accused Sonu Gond. The other two applicants namely, Santu Gond and Aman Yadav are alleged to be the conspirators of the crime in question. With regard to applicants Santu Gond and Aman Yadav, the learned counsel for applicants further contend that conspiracy is a closed door affair and therefore, subject to trial evidence. With regard to applicant Shiv Prasann Chaubey, the learned counsel for applicant contends that except the second statement of the first informant, there is no other incriminating circumstance which has emerged against the applicants. Neither any recovery has been made from the applicants nor there is any evidence of last seen. Since the present case is a case of circumstantial evidence therefore motive plays an important role. However, no strong motive has yet emerged against the applicants for committing the crime in question. Since there was no previous enmity, no animus can be attached to the applicants for committing the crime in question. On the above premise, it is thus urged that applicants are liable to be enlarged on bail.

Even otherwise, the applicants are men of clean antecedents having no criminal history to their credit except the present one. The applicants are in jail since 23.06.2023. As such, they have undergone more than four months of incarceration. The police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted against the applicants, therefore the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the

custodial arrest of applicants during the pendency of trial. It is thus contended 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 the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since the applicants are charge-sheeted accused therefore, they do not deserve any indulgence by this court. 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, the learned counsel representing first informant, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made coupled with the fact that the present case is a case of circumstantial evidence therefore, there is no eye-witness of the occurrence, complicity of an accused in a case based upon circumstantial evidence has to be judged in the light of parameters laid down in **Sharad Birdhichand Sarda (supra)**, up this stage none of the parameters laid down in aforementioned judgement are prima facie satisfied against the applicants, applicants are not named in the FIR, the applicants are charge-sheeted accused, the complicity of applicants in the crime in question has emerged in the second statement of the first informant under Section 161 CrPC referred to above which was recorded after more than seven days of the previous statement under Section 161 CrPC, the applicants Santu Gond and Aman Yadav have been alleged to be the conspirators of the crime in question, conspiracy is a closed door affair and therefore subject to trial evidence, neither there is any recovery from the applicants nor there is any evidence of last seen, no strong motive has emerged against applicants for committing the crime in question, even when motive plays an important role in a case based on circumstantial evidence, there is no previous enmity between the parties as such no animus can be gathered against the applicants for committing the crime in question, in spite of the fact that the charge-sheet has been submitted against applicants and therefore the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized, yet the learned A.G.A. nor the learned counsel for first informant could point out any such incriminating circumstance from the record necessitating the custodial arrest of the applicants during the pendency of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal and Another Vs. State of Maharashtra and Another 2023 LiveLaw (SC) 373 (paragraph 5)**, the clean antecedents of applicants, the period of incarceration

undergone, therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to the present application for bail but, without making any comments on the merit of the case, the applicants have made out a case for bail.

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

Let the applicants **Shiv Prasann Chaubey @ Vikas Chaubey, Santu Gond and Aman Yadav**, involved in aforesaid case crime number, be released on bail on their furnishing personal bond with 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 applicants shall file an undertaking to the effect that they 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under section 229-A I.P.C.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under section 82 Cr.P.C., may be issued and if applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under section 174-A I.P.C.

(iv) The applicants 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 applicants 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 them 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 applicants.

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 :- 16.11.2023.
Rks.