

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37606 of 2023

Applicant :- Mangru

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Shoeb Khan

Counsel for Opposite Party :- G.A.,Pavan Dwivedi,Rakesh Prasad Mishra

and

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32666 of 2023

Applicant :- Sonu

Opposite Party :- State of U.P.

Counsel for Applicant :- Deepak Kumar Tripathi

Counsel for Opposite Party :- G.A.,Rakesh Prasad Mishra

Hon'ble Rajeev Misra,J.

1. Heard Mr. Mohd. Shoeb Khan, the learned counsel for applicant-Mangru, Mr.Deepak Kumar Tripathi, the learned counsel for applicant-Sonu, the learned A.G.A. for State and Mr.,Rakesh Prasad Mishra, the learned counsel representing first informant.

2. Perused the record.

3. These applications for bail have been filed by applicants-Mangru and Sonu seeking their enlargement on bail in Case Crime No. 54 of 2023 under Sections 302, 394, 411, 34 I.P.C., Police Station-Khajni, District-Gorakhpur, during the pendency of trial.

4. Record shows that on 03.03.2023, a F.I.R. was lodged by first informant- Buddhi Ram Yadav (father of the deceased) and was registered as Case Crime No. 54 of 2023 under Sections 302, 394,

411, 34 I.P.C., Police Station-Khajni, District-Gorakhpur. In the aforesaid F.I.R., an unknown person has been arraigned as solitary accused.

5. The gravamen of the allegations made in the F.I.R is to the effect that Ram Singh Yadav son of first informant let home but he did not return. On 03.03.2023 in the morning, the dead body of the deceased was recovered on the Tempu bearing No. U.P. 53 GT 6057.

6. After aforementioned F.I.R. was registered, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. The post-mortem of the body of deceased was conducted on the same day i.e. 03.03.2023. In the opinion of autopsy surgeon, the cause of death of deceased was haemorrhagic shock due to ante-mortem stab injury. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"i A stab injury size 2x0.5 margin are smooth present over right side upper abdomen, 10 cm inferior right nipple. spindle shaped, on cutting soft tissue underneath liver punctured and depth. 8 cm.

ii. A stab injury size 2 x 0.5 cm. margin are smooth present over left side of abdomen 3 cm lateral to umbilicus spindle shaped on cutting soft tissue underneath intestine punctured and depth. 5 cm.

iii. A stab injury size 2 x 0.5 cm margin are smooth present over left side of abdomen 4.5 cm lateral to upper umbilicus spindle shaped on cutting soft tissue underneath. Intestine punctured and depth. 6 cm. Two Liter clotted blood to

peritoneum cavity present.

7. During course of investigation, Investigation Officer examined first informant and other witnesses under Section 161 Cr.P.C. However, the complicity of applicant emerged in the disclosure made by the police informer. On the basis of said information, the applicants were arrested on 29.03.2023 ie. after 26 days of the occurrence. From the person of accused/applicant Sonu a Knife was recovered. From the person of Mangru an android Mobile Phone was recovered. On the basis of above, Investigating Officer came to the conclusion that complicity of applicants is established in the crime in question. He accordingly submitted the charge sheet on 29.04.2023, whereby applicants have been charge-sheeted under Sections 302, 394, 411, 34 I.P.C

8. Learned counsel for applicants contend that applicants are innocent. Applicants are not named in the F.I.R.. Though the applicants are charge-sheeted accused yet they are liable to be enlarged on bail. As per prosecution story as unfolded in the F.I.R. he submits that present case is a case of circumstantial evidence. As such, there is no eye-witness of the occurrence. Complicity of an accused in a case based upon circumstantial evidence has to be inferred in accordance with the parameters laid down by Apex Court in **Sharad Birdhi Chand Sarda vs State Of Maharashtra reported AIR 1984 SC 1622**. However, upto this stage, none of the parameters laid down in aforesaid judgement are satisfied against present applicants. There is no evidence of last seen against applicants. Neither any motive has emerged against applicants to commit the crime in question nor any animus can be gathered against applicants to commit the crime in question. The only

incriminating circumstance that has emerged against applicants is the recovery of knife from the possession of applicant Sonu and an Android Mobile Phone from the possession of applicant Mangru. No attempt was made by Investigating Officer to establish that Mobile Phone, which was recovered from the applicant Mangru belong to deceased. Moreover, the recovery is false. The same is implanted. There is no independent witness of the recovery which was made after 26 days of the occurrence. As such no reliance can be placed upon the same.

9. Applicant-Mangru has criminal history of one case but the same has been sufficiently explained in the affidavit filed in support of bail application of applicant Mangru. Applicant Sonu is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicants are in jail since 29.03.2023 As such they have undergone approximately 7 months of incarceration. The 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 relied upon by the prosecution against applicants stands crystalized. Upto this stage, no such incriminating circumstance has emerged against applicants necessitating the custodial arrest of applicants during the pendency of trial. He therefore contends 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.

10. Per contra, the learned A.G.A. for State and the learned counsel for first informant have vehemently opposed the prayer for bail. They submit that since applicants are charge-sheeted accused therefore they do deserve any indulgence by this Court. However, they 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 applicants, the learned A.G.A. for State, the learned counsel representing first informant, 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 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 circumstantial evidence has to be judged in the light of parameters laid down by Apex Court in **Sharad Birdhi Chand Sarda (supra)** referred to above, up to this stage, none of the parameters laid down by Apex Court in aforementioned judgement are satisfied against applicants, no strong motive has emerged against applicants for committing the crime in question, upto this stage the incriminating circumstance that has emerged against applicants as detailed above is by itself not so sufficient so as to infer the guilt of present applicants, police report (charge-sheet) under 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 crystalized, yet in spite of above, 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 applicant during the course of trial, the judgment of Apex Court in **Sumit Subhash Chandra Gangawal and another Vs. State**¹¹³ of Maharashtra and another 2023 Live Law SC 373, the period of incarceration undergone by applicants, the explained criminal history of applicant Mangru, the clean antecedents of applicant Sonu, therefore irrespective of the objections raised by learned A.G.A. and the learned counsel for

first informant in opposition of the present applications for bail but without expressing any opinion on the merits of the case, applicants have made out a case for bail.

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

13. Let the applicants-**Mangru and Sonu** 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.

14. 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 applicant and send them to prison

Order Date :- 26.10.2023

YK