

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44341 of 2023

Applicant :- Sachin

Opposite Party :- State of U.P.

Counsel for Applicant :- Dileep Kumar Singh, Rohit Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Yatish Kumar Dwivedi, Advocate holding brief of Sri Dileep Kumar Singh, learned counsel for the applicant, Sri Virendra Pratap Singh, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Sachin, seeking enlargement on bail during trial in connection with Case Crime No. 163 of 2022, under Sections 364, 302, 506, 34 I.P.C., registered at Police Station Chikasi, District Hamirpur.
4. The FIR of the matter was lodged on 19.09.2022 at 15:06 hrs by Sri Ram against the applicant, Chandrabhan, Rinku and two unknown persons alleging therein that in the night of 18/19.09.2022 at about 01:30 am his grandfather Gaya Prasad was sleeping at the door of the house where the accused persons came and tried to take him away. On his raising a shout, they woke up and saw them taking away his grandfather. They tried to stop them but they threatened by a country made pistol after which they hid themselves in the house. In the morning, his chacha Govind Das informed him that the body of Gaya Prasad is lying beside the road near a canal and a lot of people have collected there. They reached there and found his body.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the present incident is a night incident. The First Information Report has been lodged after unexplained delay of about 14 hours. It is argued that the conduct of the first informant and his other family members is highly improbable inasmuch as if they had seen the

accused persons taking away their grandfather they would have immediately acted upon and informed the police authorities but they did not do so and out of fear hid themselves in the house and then on the next day at about 03:00 pm the present FIR has been lodged. It is argued that the trial in the present matter has started in which the first informant Sri Ram has been examined as PW-1 and Jeevan Lal has been examined as PW-2. The said witnesses in their depositions have stated that they did not see the accused persons taking away the deceased Gaya Prasad. It is argued that co-accused Rinku @ Rinkal has been granted bail by a co-ordinate Bench of this Court vide order dated 16.05.2023 passed in Crl. Misc. Bail Application No. 18064 of 2023 (Rinku @ Rinkal Vs. State of U.P.), copy of the order has been produced before the Court which is taken on record. It is argued while placing para 22 of the affidavit that the applicant has criminal history of three other cases in which one case is prior to the present case in which he is on bail whereas two other cases being under the Arms Act and the other is Gangsters Act are after the present case. The applicant is in jail since 22.09.2022.

6. Per contra, learned counsel for the State opposed the prayer for bail.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the First Information Report has been lodged after unexplained delay of about 14 hours. The first informant and another witness in the testimony before the trial court have not stated of the accused taking away their grandfather. Co-accused Rinku @ Rinkal has been granted bail.

8. Looking to 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.

9. Let the applicant **Sachin**, 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 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.

10. 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.

11. The bail application is ***allowed***.

Order Date :- 18.10.2023

M. ARIF

(Samit Gopal, J.)