

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37455 of 2023

Applicant :- Ravindra Pal

Opposite Party :- State of U.P.

Counsel for Applicant :- Pramod Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Pramod Kumar, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Ravindra Pal, seeking his enlargement on bail in Case Crime No. 151 of 2011, under Sections 302/34 IPC, Police Station-titavi, District-Muzaffar Nagar during the pendency of trial i.e. Sessions Trial No. 24 of 2012 (State Vs. Tejpal and Others), under Sections 302/34 IPC, Police Station-Titavi, District-Muzaffar Nagar now pending in the Court of Additional District Judge, Court No.-6, Muzaffar Nagar.

4. Record shows that in respect of an incident, which is alleged to have occurred on 05/06.07.2011, a prompt FIR dated 06.07.2011 was lodged by first informant-Anil and was registered as Case Crime No. 151 of 2011, under Sections 302 IPC, Police Station-titavi, District-Muzaffar Nagar. In the aforesaid FIR, 3 persons namely (1) Tejpal, (2) Ravindra (i.e. applicant herein) and (3) Brijpal have been nominated as named accused.

5. After completion of statutory investigation of aforementioned case crime number, Investigating Officer submitted the charge sheet dated 31.08.2011 whereby 2 of the named accused namely Tejpal and Brijpal were charge sheeted under Sections 302/34 IPC. Another named accused Ravindra Pal (i.e. applicant herein) was exculpated. After submission of above mentioned charge sheet, cognizance was taken upon same by concerned Magistrate. However, as offence complained of is exclusively triable by court of Sessions, consequently, concerned Magistrate committed the case to the court of Sessions. As a result, aforementioned Sessions

Trial came to be registered. During course of trial, PW-1 Anil Kumar (son of the deceased) deposed before court below. Another witnesses namely Arun Kumar also son of the deceased deposed before court below as PW-2. Since the complicity of present applicant and Muniraj surfaced in the statements of aforesaid witnesses, accordingly, prosecution filed an application under Section 319 Cr.P.C. praying therein that aforesaid accused be also summoned to face trial. The said application came to be allowed by court below. Accordingly, applicant was summoned by court below to face trial in above mentioned Sessions Trial.

6. Learned counsel for applicant submits that though applicant is a named accused but he was exculpated by the Investigating Officer. He, therefore, contends that during course of investigation, no such material emerged against applicant on the basis of which, the complicity of applicant stood established in the crime in question. Applicant has been summoned by court below in exercise of jurisdiction under Section 319 Cr.P.C. However, except for the complicity of accused, no strong and cogent evidence has emerged against applicant in the statement of the 2 witnesses i.e. PW-1 and PW-2, who have been examined up to this stage.

7. It is then contended that charge sheeted co-accused Brijbhan and Brijpal have already been enlarged on bail by this Court vide order dated 01.11.2011 passed in Criminal Misc. Bail Application No. 28534 of 2011 (Brijpal and Another Vs. State of U.P.). For ready reference, the same is reproduced hereinunder:-

"Heard learned counsel for the applicants and the learned A.G.A. and perused the record.

It is contended by learned counsel for the applicants that applicants have been named in the FIR on the doubt and suspicion. During investigation, the evidence of extrajudicial confession and applicants were seen coming out in a perturb condition, has been collected by I.O. There is no evidence against the applicants. The applicants are in jail since 03.08.2011.

In reply of the above contention, it is submitted by the learned A.G.A. that the applicants are having criminal antecedents. Therefore, some condition may be imposed.

In view of the facts and circumstances of the case and submissions made by the learned counsel for the applicants and without expressing any opinion on the merits of the case, the applicants are entitled to be released on bail.

Let the applicants Brijpal and Tejpal, involved in Case Crime No. 151 of 2011, under Section 302 IPC, Police Station-Titavi, District-Muzaffar Nagar, be released on bail on their furnishing a personal bond and two

heavy sureties to the satisfaction of the Court concerned with the conditions:-

That the applicants shall not tamper with the evidence.

That they shall report to the court of C.J.M. concerned in the first week of each month to show their good conduct and behaviour till conclusion of the trial.

In case of default in any of the above mentioned conditions, the bail granted to the applicants shall be deemed cancelled and they shall be taken into custody forthwith"

8. On the above premise, the learned counsel for applicant contends that since charge sheeted co-accused have already been enlarged on bail and the applicant has been summoned by court below in exercise of jurisdiction under Section 319 Cr.P.C., therefore, applicant is also liable to be enlarged on bail.

9. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 08.08.2023. As such, he has undergone more than 2 and 1/2 months of incarceration. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. On the above premise, he submits that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that complicity of applicant in the crime in question is fully established as per the deposition of PW-1 and PW-2. As such, no indulgence be granted by this Court in favour of applicant. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant in support of the present application for bail with reference to the record at this stage.

11. 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 charge sheeted co-accused have already been enlarged on bail, applicant has been summoned by court below in exercise of jurisdiction under Section 319 Cr.P.C. up to this stage, except for the complicity of applicant, no other strong and cogent evidence has emerged against applicant, something more than mere complicity of applicant in the crime in question can, therefore, be ascertained only after the entire prosecution

evidence has been recorded, the clean antecedents of applicant, the period of incarceration undergone, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, 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, applicant has made out a case for bail.

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

13. Let the **applicant-Ravindra Pal**, be released on bail in the aforesaid case crime number 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 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.

14. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his 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

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