

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37532 of 2023

Applicant :- Akil

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashfaq Ahmed Ansari

Counsel for Opposite Party :- G.A.,Ambreen Masroor

and

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36687 of 2023

Applicant :- Nadeem

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashfaq Ahmed Ansari

Counsel for Opposite Party :- G.A.,Ambreen Masroor

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ashfaq Ahmed Ansari, the learned counsel for applicants-Akil and Nadeem, the learned A.G.A. for State and Mr. N. I. Jafri, the learned Senior Counsel assisted by Asif Ahmad Advocate holding brief of Mr. Ambreen Masroor , the learned counsel representing first informant.

2. Perused the record.

3. These applications for bail have been filed by applicants--Akil and Nadeem seeking their enlargement on bail in Case Crime No. 06 of 2023 under Sections 302, 364, 201 I.P.C., Police Station-Phugana District- Muzaffar Nagar during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred 22.01.2023, a delayed F.I.R dated 28.01.2023 was lodged by first informant Usman (father of the deceased) and was

registered as Case Crime No. 06 of 2023 under Section 364 I.P.C., Police Station-Phugana District- Muzaffar Nagar. In the aforesaid F.I.R. seven persons namely Sanabbar, Manabbar, Akil, Shakil, Bilal, Pharjana, Mohseen have been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that Saquib son of first informant went missing from 22.01.2023. The F.I.R. further records that as per disclosure made by Abdul son of Yunus and Harun to the first informant named accused forcibly kidnapped the son of the first informant on 22.01.2023 at around 1.00 PM.

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 Investigating Officer recorded the statement of first informant and other witnesses namely, Anis, Safiq, Adil, Abdul, Harun under Section 161 Cr.P.C. Complicity of the applicant in the crime in question appeared in the statement of Anis wherein it was alleged that applicant was last seen in the company of other persons near canal. On the basis of above, applicant was arrested on 30.01.2023. On the pointing of applicant the beheaded body of the deceased was retrieved from the canal which was concealed in a plastic bag. The retrieved dead body was identified as the dead body of the deceased by applicant and the family members of the deceased.

7. Thereafter, inquest (panchayatnama) of the body of deceased was conducted on 30.01.2023. In the opinion of the witnesses of inquest (panch witnesses), the nature of death of deceased was categorized as homicidal and cause of death of deceased was beheading the deceased. Subsequent to above, 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 could not be ascertained therefore viscera was preserved. Learned A.GA. contends that F.S.L. report has not yet been received him him. On the basis of above and other material collected by Investigating Officer, he came to the conclusion that complicity of six persons namely Sanabbar, Manabbar, Akil, Bilal, Farman (all named accused and not named accused Nadeem is established in the crime in question.

8. At the very outset, the learned counsel for applicant submits that co-accused Smt. Farzana has been enlarged on bail by this Court vide order dated 04.07.2023 passed in Criminal Misc. Bail Application No. 21.240 of 2023 (Smt. Farzana Vs. State of U.P.). For ready reference, the order dated 04.07.2023 is reproduced hereinin-under:

"1. Supplementary affidavit filed today on behalf of the applicant is taken on record.

2. Heard Sri Ashfaq Ahmed Ansari, learned counsel for the applicant, Sri Awaish Khan Advocate holding brief of Sri Sadrul Islam Jafri, learned counsel for the informant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 06 of 2023, under Sections 302, 364, 201 IPC, Police Station- Phugana, District- Muzaffar Nagar, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 28.01.2023 under Section 364 IPC against the applicant and six others and according to the FIR, son of the informant was missing since 22.01.2023 and on 28.01.2023 Abdul @ Dull and Harun informed the informant that applicant along with other nominated accused persons abducted him on 22.01.2023 at about 10:00 p.m. in the night.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and Harun, one of the witness who informed the informant that

applicant along with six others abducted the victim on 22.01.2023 is the real brother of the informant i.e. uncle of the abductee and therefore, it is hard to believe that he witnessed the incident as he was mum for six days. He further submitted that the another witness Abdul @ Dulla is also neighbour of the informant, therefore, it is also hard to believe that he also remained mum for six days and therefore, this fact clearly suggests that after about a week informant, on the basis of these two witnesses, implicated the applicant along with six others.

6. He further submitted that initially FIR of the present case was lodged under Section 364 IPC but when co-accused Nadeem, the brother of the applicant was arrested then on his pointing out beheaded dead body of the deceased was recovered and thereafter case was converted under Section 302 IPC. He further submitted that applicant is a lady and except the evidence of abduction dated 22.01.2023, there is no other evidence against the applicant on record.

7. Per contra, learned AGA as well as learned counsel for the informant although, opposed the prayer for bail but could not dispute the fact that applicant is a lady and except the evidence of abduction dated 22.01.2023, there is no evidence against the applicant on record and further, both the counsels could not dispute the fact that both the witnesses Abdul and Harun who witnessed that applicant along with other accused persons abducted the son of the informant on 22.01.2023 they informed this fact to him only on 28.01.2023 i.e. after about six days and they further could not dispute the fact that witness Harun is the real uncle of the deceased and witness Abdul is his neighbour.

8. I have heard learned counsel for the parties and perused the record of the case.

9. Initially FIR of the present case was lodged under Section 364 IPC but after recovery of the dead body, case was converted under Section 302 IPC and there is no evidence of commission of murder against the applicant and only evidence of abduction is against her on record. Record further shows that two witnesses Abdul and Harun witnessed the applicant along with others while they were abducting the deceased on 22.01.2023 at about 10:00 p.m. in the night but they did not immediately react and neither they informed either to the police or to the informant immediately and they informed the informant only on 28.01.2023 i.e. after about six days and witness Harun is the real uncle of the deceased while witness Abdul is his neighbour.

10. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

11. Therefore, from the discussion made above, in my view applicant is entitled to be released on bail.

12. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

13. Let the applicant-Smt. Farzana be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

14. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

15. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 4.7.2023 "

9. Other named co-accused Shakil and Bilal have also been enlarged on bail by this Court vide order dated 04.08.2023 passed in Criminal Misc. Bail Application No. 26827 of 2023 (Shakeel and another Vs. State of U.P.). For ready reference, the order dated 04.08.2023 is reproduced hereinin-under:

"वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र, आवेदकगण शकील एवं बिलाल की ओर से मु० अ० सं० 6 सन 2023, अन्तर्गत धारा 302, 364, 201

भा0 दं0 वि0, थाना फुगाना, जिला मुजफ्फरनगर में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

आवेदकगण के विद्वान अधिवक्ता, परिवादी के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिषीलन किया।

आवेदकगण के विद्वान अधिवक्ता का कथन है कि आवेदकगण को इस प्रकरण में गलत एवं फर्जी तरीके से झूठा फँसाया गया है, उन्होंने कथित अपराध कारित नहीं किया है, घटना की प्रथम सूचना रिपोर्ट विलम्ब से दर्ज करायी गयी है जिसका कोई स्पष्टीकरण नहीं दिया गया है, चष्मदीद साक्षी वादी का सगा चचाजात भाई है, मुलजिमानों द्वारा रात 10 बजे मृतक का अपहरण करके ले जाते हुए देखना बताया गया है, जबकि घटना की रात चांद की 28 तारीख थी जो अंधेरी रात थी, ऐसे में किसी को पहचानना मुश्किल है, आवेदक के पास से उसे घटना में संलिप्त करने वाली कोई वस्तु बरामद नहीं हुयी है, जो भी बरामदगी हुयी है वह सह अभियुक्तगण मनव्वर, सनव्वर एवं नदीम के पास से हुयी है। उनका यह भी कथन है कि इस प्रकरण में सह अभियुक्ता श्रीमती फरजाना की जमानत, जमानत आवेदन पत्र सं0 21240 सन 2023 में इस न्यायालय की अन्य न्यायपीठ के आदेश दि0 4-7-2023 द्वारा स्वीकार की जा चुकी है, आवेदकगण निर्दोष हैं तथा वे इस प्रकरण में दि0 29-1-2023 से कारागार में निरुद्ध हैं, इसलिए आवेदकगण को जमानत पर छोड़ दिया जाय।

परिवादी के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता ने आवेदकगण के विद्वान अधिवक्ता के तर्कों का प्रबल विरोध करते हुए तर्क प्रस्तुत किया कि आवेदकगण/अभियुक्तगण द्वारा कारित अपराध संज्ञेय एवं गम्भीर प्रकृति का है, इसलिए आवेदकगण को जमानत पर न छोड़ा जाय। आवेदकगण के विद्वान अधिवक्ता के तर्कों के परिप्रेक्ष्य में पत्रावली पर उपलब्ध सारवान तथ्यों एवं परिस्थितियों का समग्र रूप से अवलोकन करने के बाद, सबूतों की प्रकृति और किसी भी ठोस विरोधात्मक सामग्री की अनुपस्थिति एवं उपलब्ध सामग्री से छेड़छाड़ की संभावना न होने के तथ्य को देखते हुए मेरी राय में आवेदकगण को जमानत पर मुक्त करने का उपयुक्त आधार है।

अतः वाद के गुण दोष पर बिना कोई टिप्पणी किए हुए आवेदकगण को उपरोक्त वर्णित अपराध में संबंधित न्यायालय की सन्तुष्टि पर व्यक्तिगत बंध-पत्र एवं अधिक धनराशि के दो-दो स्थानीय प्रतिभू प्रस्तुत करने पर निम्नलिखित शर्तों के साथ जमानत पर छोड़ दिया जाय।

- 1- आवेदकगण विवेचना या परीक्षण के दौरान अभियोजन साक्ष्यों के साथ छेड़छाड़ नहीं करेंगे।
- 2- आवेदकगण अभियोजन साक्षियों व पीड़ित/षिकायतकर्ता को डरायेंगे/धमकायेंगे नहीं।
- 3- आवेदकगण न्यायालय के आदेशों का पालन करेंगे, वह परीक्षण के दौरान बिना कोई अनावश्यक स्थगन लिए नियत तिथि पर न्यायालय में उपस्थित होंगे तथा परीक्षण में ईमानदारी से सहयोग करेंगे।

4- आवेदकगण जमानत पर रिहा होने के बाद जमानत की स्वतंत्रता का दुरुपयोग नहीं करेंगे और किसी भी अपराधिक गतिविधि में लिप्त नहीं होंगे न कोई अपराधिक कृत्य करेंगे।

5- आवेदकगण प्रत्यक्ष या अप्रत्यक्ष रूप से मामले के तथ्यों से परिचित किसी भी व्यक्ति या पुलिस अधिकारियों को कोई प्रलोभन या धमकी नहीं देंगे न ही उनसे कोई वायदा करेंगे, जिसके कारण उन्हें न्यायालय में तथ्यों को उजागर करने से विरत रहना पड़े।

उपरोक्त शर्तों में से किसी के उल्लंघन के मामले में, परीक्षण न्यायालय आवेदक की जमानत नियमानुसार रद्द करने को स्वतंत्र है।

दि0: 4-8-2023 "

10. On the above premise, the learned counsel for applicant contends that the case of present applicants is similar and identical to that of bailed out co-accused. He also contends that there is no such distinguishing feature on the basis of which case of present applicants can be so distinguished from the aforesaid bailed out co-accused so as to deny him bail. On the above premise, the learned counsel for applicant contends that in view of above and for the facts and reasons recorded in the bails orders dated 04.07.2023 and 04.08.2023 of bailed out co-accused, applicants are also liable to be enlarged on bail on the ground of parity.

11. Even otherwise, applicants are men of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicants are in custody since 23.02.2023. As such, they have undergone more than eight months of incarceration. 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 be relied upon by the prosecution against applicants stands crystallised. Upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. On the above premise, the learned counsel for applicants thus submits that

applicants are liable to be enlarged on bail. In case applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

12. Per contra, the learned A.G.A. for State and the learned senior counsel for first informant have vehemently opposed the prayer for bail. They submit that since applicant Akil is a named and charge-sheeted accused therefore he does deserve any indulgence by this Court. It is then contended by learned senior counsel for first informant that case of applicant Nadeem is distinguishable from co-accused Akil as on the pointing of applicant Nadeem beheaded dead body of the deceased was recovered. Criminality committed by applicants is joint and common. As such, same is incapable of being separated or segregated. As such no sympathy be shown by this court in favor of applicants.

13. Having heard the learned counsel for applicants, the learned A.G.A. for State, the learned senior counsel for first informant upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant this Court finds that case of applicant Akil is similar and identical to aforementioned bail out co-accused, no recovery on the pointing of applicant Akil has been made, period of incarceration undergone, clean antecedent of applicant Akil, the police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised, 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 learned A.G.A. and the learned Senior Counsel for first informant in opposition to

the present applications for bail of applicant Akil but without expressing any opinion on the merits of the case, applicant Akil has made out a case for bail.

14. Accordingly, present application for bail of applicant Akil is **allowed**.

15. Let the applicant- **Akil** involved in aforesaid case crime number be released on bail 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) Applicant will not tamper with prosecution evidence.

(ii) 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) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

16. 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 him to prison

17. So far as bail application of applicant Nadeem is concerned, the court finds that case of present applicant is distinguishable from applicant Akil as well as aforementioned bailed out co-accused. The beheaded dead body of the deceased was recovered on the pointing of the applicant Nadeem from the Canal which was

concealed in a plastic bag. The aforesaid incriminating circumstance clearly belies the innocence of the applicant Nadeem therefore irrespective of the submissions urged by learned counsel for applicant in support of bail application of applicant Nadeem this Court does not find any good or sufficient ground to enlarge the applicant on bail.

18. As a result, the present application for bail of applicant Nadeem fails and is liable to be **rejected**.

19. It is accordingly **rejected**.

Order Date :- 28.10.2023

YK