

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37456 of 2023

Applicant :- Santa

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhishek Tiwari

Counsel for Opposite Party :- G.A.

and

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37741 of 2023

Applicant :- Bhupendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Kumar Rajbhar, Pramod Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Abhishek Tiwari, the learned counsel for applicant-Santa, Mr. Pramod Kumar, the learned counsel for applicant-Bhupendra and the learned A.G.A. for State.

2. Perused the record.

3. These applications for bail have been filed by applicants-Santa and Bhupendra seeking their enlargement on bail in Case Crime No. 46 of 2023 under Sections 365, 498A, 302, 201, 120B I.P.C., Police Station-Knowledge Park,, District-Gautam Budh Nagar, during the pendency of trial.

4. Criminal Misc. Bail Application No. 37741 of 2023 (Bhupendra Vs. State of U.P.) came up for orders on 03.10.2023 and this Court passed the following order:-

"1. List revised.

***2. Heard Sri Pramod Kumar, learned counsel for the applicant, Sri Bare Lal Bind, learned State counsel. ***

3. Learned counsel for the applicant prays for a month's time to file supplementary affidavit annexing the charge sheet and the entire material collected during investigation. Prayer is allowed.

4. Learned A.G.A. submits that he has received instructions in the matter for which time was granted on 28.8.2023.

5. Let the matter be listed on 12.12.2023. "

5. In compliance of above order dated 03.10.2023, Mr. Pramod Kumar, the learned counsel for applicant-Bhupendra has filed a supplementary affidavit in Court today which is taken on record.

6. Record shows that marriage of Lala @ Jogendra was solemnized with Sarita (sister of first informant) on 16.02.2015. However, just after expiry of a period of 7 years and 29 days from the date of marriage of Lala @ Jogendra with Sariata, wife of Jogendra @ Lala i.e. Sarita went missing on 09.03.2023. Accordingly a Missing Person Report was lodged on 09.03.2023 by Lala @ Jogendra (husband). Copy of the same is on record at page 29 of the paper book. Subsequently, a delayed F.I.R. dated 15.04.2023 was lodged by first informant Narendra (brother-in-law of husband Lala @ Jogendran) and was registered as Case Crime No. 46 of 2023 under Sections 365, 498A, I.P.C. and 3/4 D. P. Act. Police Station-Knowledge Park,, District-Gautam Budh Nagar, In the aforesaid F.I.R., seven persons namely Lala @ Jogendra (husband), Santa (mother-in-law), Bhupendra (Jeth), Usha (Jethani) Vijaypal (cousin father-in-law), Manoj (Nandoi) and Vinod (nandoi) of the deceased has been nominated as named accused.

7. The gravamen of the allegations made in the F.I.R is to the effect that marriage of Sarita, sister of the first informant was solemnized with Jogendra @ Lala on 16.02.2015. From the aforesaid wedlock, a son Vivan was born, who is aged about 6 years. At the time of marriage sufficient amounts of goods and dowry were given. However, subsequently, additional demand of dowry was made. As the said demand of dowry was not fulfilled, physical and mental cruelty was committed upon the sister of first informant. The F.I.R. concludes with the recital that the sister of first informant has gone missing. However, the first informant has every apprehension that his sister has been put to death by named accused.

8 After aforementioned, F.I.R was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. The dead body of the deceased was recovered on 30.03.2023 and was in decomposed condition. The dead body of the deceased was identified by the family members of the deceased on the basis of clothes of the deceased found in the vicinity of the dead body. It is apposite to mention here that information with regard to the position of the dead body was given by PVR Police Van stationed near the place where the dead body was lying. On the basis of above, Lala @ Jogendra (husand) Santa (mother-in-law), Bhupendra (jeth) and Usha (jethani) of the deceased were arrested. Subsequently on the pointing of the husband of the deceased namely Lala @ Jogendra, the weapon of assault (a spade-Fawada) was recovered.

9. After the dead body of the deceased was recovered, the inquest (panchayatnama) of the body of deceased was conducted on 31.03.2023. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as

homicidal. Thereafter, the post mortem of the body of the deceased was conducted. The Doctor, who conducted autopsy of the body of deceased could not opine the cause of death of deceased. As such, the viscera of the deceased was preserved. However, the autopsy surgeon found following ante-mortem injuries on the body of the deceased:-

i. Lower Jaw separated from upper jaw.

ii. Rt. arm muscle absent below Rt. elbow joint.

iii. Left arm absent from shoulder.

10. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially supported the F.I.R.. Thereafter, the statement of the accused were recorded individually. Applicants are alleged to have confessed the commission of crime.

11. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of four of the named accused namely Lala @ Jogendra (husband), Santa (mother-in-law), Bhupendra (Jeth) and Usha (Jethani) of the deceased is fully established in the crime in question. He, accordingly submitted the charge sheet dated 02.05.2023 whereby above named accused have been charge sheeted under Sections 365, 498A, 302, 201, 120B I.P.C., Police Station-Knowledge Park,, District-Gautam Budh Nagar whereas the other three named accused have been exculpated.

12. Learned counsel for applicants contend that applicants are innocent. Though the applicants are named as well as 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 based on 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 provided in aforesaid judgement are satisfied against present applicants. There is no evidence of last seen against applicants. In respect of bail application of applicant Santa, it is urged by the learned counsel for applicant that applicant is mother-in-law of the deceased. As such, applicant Santa is a lady and therefore, she is entitled to the benefit of the provision contained in proviso to Section 437 Cr.P.C. During course of investigation the following two incriminating circumstances have emerged against applicant:-i. After the arrest of the applicants and others but on the pointing of Lala @ Jogenera, husband of the deceased, the weapon of assault i.e Spade (Fawda) was recovered. However the same cannot be said to be a joint recovery. ii. Confessional statements of applicants recorded before Investigating Officer during course of Investigation. In the submission of the learned counsel for applicant, both the incriminating circumstance that have emerged against applicant are neither singularly nor cumulatively are sufficient enough to infer the guilt of applicants in the crime in question.

13. According to learned counsel for applicants, confession made to a police officer is a very weak type of evidence. Moreover, no conviction can be based solely on confession, and there must be contradiction of the same with other evidence. Moreover a confession cannot be used to corroborate the guilt of another accused. To buttress his submission, he has referred to the judgement of the Supreme Court in Kashmira Singh Vs. State of

M.P., 1952 (1) SCC 275. It is lastly contended that no recovery has been made on the pointing of applicants nor the theory of last seen has emerged against applicants. No motive can be attached to the applicants for committing in the crime in question. Placing reliance upon the judgement of Apex Court in **Nandu Singh Vs. State of M.P., 2022 SCC ON Line SC 1454**, they submit that motive plays an important link to complete the chain of circumstances in a case based on circumstantial evidence. However, as no strong motive has emerged against applicants to commit the crime in question, therefore, they are liable to be enlarged on bail.

14. Even otherwise applicants are of clean antecedents inasmuch they have no criminal history to their credit except the present one. Applicants are in custody since 01.04.2023. As such, they have under-gone more than seven and a half months of incarceration. Police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted, therefore the entire evidence sought to relied upon by the prosecution against applicant stands crystallised. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. In support of above reliance is placed upon the judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), the learned counsel for applicant submits 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.

15. Per contra, the learned A.G.A. for State has vehemently opposed the prayer for bail. He submits that since applicants are named as well as charge-sheeted accused therefore they do deserve

any indulgence by this Court. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

16. 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 applicants 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)**, 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, motive plays an important role in a case based on circumstantial evidence as it is an important link in the chain of circumstances vide **Nandu Singh (supra)**, upto this stage the two incriminating circumstances that have emerged against applicants as detailed above are by themselves not sufficient enough to infer the guilt of present applicants in the crime in question, confession by an accused is by itself not sufficient to award conviction, in this case there is no corroboration of the same with the material on record, the clean antecedents of applicants, the period of incarceration undergone by 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 applicants stands crystalized, 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 applicants during the pendency 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,, therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present applications for bail but without expressing any opinion on the merits of the case, applicants have made out a case for bail.

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

18. Let the applicants-**Santa and Bhupendra** 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.

19. 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 :- 20.11.2023
YK