

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37524 of 2023

Applicant :- Shravan Chowdhary @ Mahendra Nath Chowdhary

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Shoeb Khan

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Mohd. Shoeb Khan, learned counsel for the applicant, Sri Ajay Singh, learned AGA-I 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 Shravan Chowdhary @ Mahendra Nath Chowdhary, seeking enlargement on bail during trial in connection with Case Crime No. 140 of 2023, under Sections 302/201 I.P.C., registered at Police Station Taryasujan, District Kushinagar.
4. Learned counsel for the applicant at the very outset submits that co-accused Arjun Yadav and Rabul Ali have been granted bail by a co-ordinate Bench of this Court vide same order dated 06.10.2023 passed in Crl. Misc. Bail Application Nos. 38548 of 2023 (Arjun Yadav Vs. State of U.P.) and 41777 of 2023 (Rabul Ali Vs. State of U.P.), copy of the orders have been produced before the Court which are taken on record. It is argued that the case of the applicant is at par with that of co-accused who have been granted bail and as such he claimed parity. It is further argued that the case is a case of circumstantial evidence. The links of chain of circumstances are missing. It is argued that the evidence against the applicant as is relied by the prosecution is that the accused persons being last seen with the deceased after which the deceased was found dead and further there is a joint recovery of bambu, stick and one pasuli on the pointing out of the applicant and co-accused persons. It is argued that the implication of the applicant is without any credible evidence. It is further argued that charge sheet in the matter has been submitted against the applicant and as such there are no chances of the applicant tampering with evidence

or threatening the witnesses. It is further argued that the applicant has no criminal history as stated in para 27 of the affidavit and is in jail since 20.05.2023.

5. Per contra, learned counsel for the State opposed the prayer for bail but could not dispute the fact that the said co-accused have been granted bail.

6. After having heard learned counsels for the parties and perusing the records, it is evident that the order of co-accused Arjun Yadav has been granted bail which reads as under:-

"Heard learned counsel for the applicant and learned A.G.A.

The instant bail application has been filed on behalf of the applicant, Arjun Yadav, with a prayer to release him on bail in Case Crime No. 140 of 2023, under Sections 302,201 IPC Police Station Tarya Sujan, District- Kushinagar, during pendency of trial.

There is allegation against the unknown accused in the First Information Report regarding commission of offences of murder and causing of disappearance of the dead body of the deceased.

Learned counsel for the applicant has submitted that it is a case of circumstantial evidence. All the evidence of the independent witnesses collected by the investigating officer show that deceased was seen in the company of applicant and other co-accused consuming TADI together. Thereafter dead body of deceased was recovered from the railway track..Eleven injuries have been found on his body. No one has seen the incident.Applicant has been falsely implicated in this case by the investigating officer only to work out the case by recording his confessional statement. The joint recovery of Bambu Stick and one Pasuli has been made. He has submitted that recovery from the joint possession is hit by section 27 of the Evidence Act.The applicant is in jail since 20.5.2023 and has no criminal history.

Learned A.G.A. has opposed the bail prayer of the applicant but could not dispute the aforesaid facts.

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed

Let the applicant 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

- 1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.*
- 2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.*
- 3. The applicant shall not indulge in any criminal activity or commission of any crime after*

being released on bail.

4. That the applicant shall not, directly or indirectly, make any 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 to any police officer;

5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 to ensure presence of the applicant.

6. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail."

7. Further, co-accused Rabul Ali has also been granted bail by a co-ordinate Bench of this Court. The same reads as under:-

"Heard learned counsel for the applicant and learned A.G.A for the State.

The submission is that co-accused, Arjun Yadav, has already been enlarged on bail vide Criminal Misc. Bail Application No. 38548 of 2023 by order of date and the case of the applicant stands on identical footing, hence the applicant is also entitled for bail for the reasons given in bail application of co-accused on the ground of parity. The applicant is in jail since 20.5.2023.

On the other hand learned A.G.A has opposed the prayer for bail.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties, larger mandate of the Article 21 of the Constitution of India, considering the recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021 and considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant, Rabul Ali, involved in Case Crime No. 140 of 2023, under Sections 302, 201 IPC, Police Station- Tarya Sujan District- Kushi Nagar, 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.

2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.

3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

4. That the applicant shall not, directly or indirectly, make any 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 to any police officer;

5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment

on the dates fixed for evidence and 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 to ensure presence of the applicant.

6. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail."

8. Looking to the facts and circumstances of this case, the nature of evidence, considering the fact of parity 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 **Shravan Chowdhary @ Mahendra Nath Chowdhary**, 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 :- 14.12.2023

M. ARIF

(Samit Gopal, J.)