

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37328 of 2023

Applicant :- Mukul Sharma

Opposite Party :- State Of U.P Through Its Principal Secretary(Home) At Lko.

Counsel for Applicant :- Siddharth Singh,Vikash Krishna Murti

Counsel for Opposite Party :- G.A.,Shikhar Awasthi

Hon'ble Rajeev Misra,J.

1. Heard Mr. Siddharth Singh, the learned counsel for applicant, the learned A.G.A. for State and Mr. Shikhar Awasthi, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Mukul Sharma seeking his enlargement on bail in Case Crime No. 198 of 2022, under Sections 364, 302, 201, 34 IPC, Police Station-Salempur, District-Bulandshahar during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 01.10.2022, a delayed FIR dated 03.10.2022 was lodged by first informant-Naresh (father of the deceased) and was registered as Case Crime No. 198 of 2022, under Section 364 IPC, Police Station-Salempur, District-Bulandshahar. In the aforesaid FIR, an unknown person has been arraigned as solitary accused.

5. The gravamen of the allegations made in the FIR is to the effect that Bhupendra Kumar @ Golu (son of the first informant) aged about 20 years and Jagdish @ Bhoora (nephew of the first informant) aged about 18 years had gone missing since 01.10.2022.

6. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. During course of investigation, Investigating Officer examined first informant and other following witnesses namely - (1) Bhola (eye witness), (2) Vinay Kumar (eye witness), (3) Maya Devi (eye witness) and (4) Dr. Sohail Ahmad under Section 161 Cr.P.C. The complicity of

applicant and other 3 accused namely (1) Durgesh, (2) Tushar and (3) Lata emerged in the crime in question. Accordingly, the applicant was arrested on 04.10.2022. On the pointing of applicant, the beheaded dead body of deceased-Bhupendra was recovered. Co-accused Durgesh in his confessional statement has implicated the applicant in the crime in question.

7. After the dead body of deceased was recovered, the post mortem of the same was conducted. In the opinion of Autopsy Surgeon, the cause of death of deceased was opined as Shock and Hemorrhage as a result of Cardio Pulmonary Arrest due to homicide. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. Amputated Head & neck, maggots & foul smell.

2. All internal organs missing body full of maggots and foul smell.

3. Puffiness in all limbs and plenty of maggots.

4. Penis is uncircumcised and puffiness and maggots."

8. On the basis of above and other material collected by him during the course of investigation he came to the conclusion that complicity of 4 persons namely - (1) Mukul Sharma (applicant herein), (2) Tushar, (3) Durgesh and (4) Lata is established in the crime in question. He, accordingly, submitted the charge sheet dated 17.12.2022 whereby aforementioned accused have been charge sheeted under Sections 364, 302, 201, 34 IPC.

9. Learned counsel for applicant submits that though the applicant is a charge sheeted accused yet he is liable to be enlarged on bail. Applicant is not named in the FIR. Present case is a case of circumstantial evidence and therefore, there is no eye witness of the occurrence. The complicity of an accused in a case based on circumstantial evidence has to be inferred in accordance with the parameters laid down by the Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622 (Paragraph 152)**. However, up to this stage, none of the parameters laid down by the Apex Court in aforementioned judgment are satisfied against applicant. The only incriminating circumstance, that has emerged against applicant, is that on the pointing of applicant, the beheaded dead body of one of the deceased i.e. Bhupendra was recovered. Apart from above, the complicity of applicant in the crime in question has surfaced in the

statement of co-accused Durgesh. Except for the aforesaid incriminating circumstances, no other circumstance has emerged against applicant. He, therefore, contends that applicant is liable to be enlarged on bail.

10. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant has been implicated under Gangster Act subsequent to the FIR giving rise to present criminal proceedings. Applicant is in jail since 04.10.2022. As such, he has undergone more than 1 year and 1/2 month of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. 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.

11. Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that the beheaded dead body of deceased Bhupendra was recovered on the pointing of present applicant. As per the post mortem report, the deceased was put to death in a brutal manner. The head of the beheaded dead body has not yet been recovered. On the above premise, it is thus urged by the learned A.G.A. and the learned counsel representing first informant that the aforesaid incriminating circumstance is by itself sufficient to infer the complicity of applicant in the crime in question. The recovery could not be demolished on the ground of being implanted or being false. As such, the case of present applicant is distinguishable from other 3 charge sheeted accused, who have already been enlarged on bail. On the above conspectus, the learned A.G.A. and the learned counsel representing first informant submit that no sympathy be shown by this Court in favour of applicant.

12. When confronted with above, the learned counsel for applicant could not overcome the same.

13. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, complicity of accused, accusations made coupled with the fact that the learned counsel for applicant could not dislodge the submission

urged by the learned A.G.A. and the learned counsel representing first informant in opposition to the present application for bail, therefore, irrespective of the varied submission urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

14. As a result, present application for bail fails and is liable to be rejected.

15. It is accordingly **rejected**.

Order Date :- 31.10.2023

Vinay