

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46226 of 2023

Applicant :- Bhole

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Sunil Kumar Singh, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This bail application has been filed by the applicant Bhole seeking his enlargement on bail in Case Crime No. 77 of 2023, under Sections 302, 201 IPC, P.S. Rajpura, District Sambhal, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 04.03.2023 a delayed F.I.R. dated 08.03.2023 was lodged by first informant Kurru (brother of the deceased) and was registered as Case Crime No. 77 of 2023, under Sections 302, 201 IPC, P.S. Rajpura, District Sambhal. In the aforesaid F.I.R., four persons namely Dharmendra, Bhole (applicant herein), Net Ram and Kumarpal alias Kurru have been nominated as named accused.

The gravamen of the allegations made in the F.I.R., is to the effect that Madan Singh, brother of deceased went missing. Ultimately, on 8.3.2023 near the cremation ground, the shirt of the deceased was recovered. Furthermore, there was a spot, which earth had been excavated and thereafter freshly filled. Upon excavation, the dead body of the deceased was exhumed. The F.I.R. further records that the brother of the first informant was put to death by the named accused.

After aforementioned F.I.R. was lodged, Investigating Officer proceeded with the statutory investigation of concerned case crime number in terms of Chapter XII Cr. P. C. The inquest (*Panchayatnama*) of the body of the deceased was conducted. In

the opinion of witnesses of inquest (*Panch* witnesses), the death of the deceased was categorized as homicidal and the cause of death of deceased was said to be the injuries sustained by the deceased. Thereafter, post mortem of the body of deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the body of deceased, opined that the cause of death of deceased is haemorrhagic shock due to head injury. In the opinion of Autopsy Surgeon, the deceased sustained following ante mortem injuries:-

(1) Contusion present on Back of Head & fracture of Parietal Bone.

(2) All Body Covered with Mud Decomposition Started.

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. On the basis of above, the named accused were arrested. On the pointing of present applicant Bhole, the weapon of assault (flat piece of iron) was recovered. Apart from above, the complicity of the applicant in the crime in question has surfaced in the confessional statement of Dharmendra, who has alleged that the deceased was assaulted by present applicant. On the basis of above and other material collected by Investigating Officer, he concluded that the complicity of is established in the crime in question. He, accordingly, submitted the charge sheet dated 19.5.2023, whereby all the named accused have been charge sheeted under Sections 302, 201 IPC.

At the very outset, the learned counsel for application contends that three of the named accused namely Dharmendra, Net Ram and Kumarpal alias Kurru Vs. State of U.P.) have already been enlarged on bail. The details of the same are as under:-

**CRIMINAL MISC. BAIL APPLICATION No. - 38886 of 2023
(Dharmendra Vs. State of U.P.)**

Connected with

CRIMINAL MISC. BAIL APPLICATION No. - 34911 of 2023 (Net Ram Vs. State of U.P.)

CRIMINAL MISC. BAIL APPLICATION NO. 30316 of 2023 (Kumarpal alias Kurru Vs. State of U.P.)

"1. Heard Mr. Sunil Kumar Singh, the learned counsel for applicants and the learned A.G.A. for State.

2. These applications for bail have been filed applicants-Dharmendra and

Ner Ram seeking their enlargement on bail in Case Crime No. 77 of 2023, under sections 302, 201 IPC, Police Station- Rajpura, District Sambhal during the pendency of trial.

3. Perused the record.

4. At the very outset, learned counsel for applicants submits that named and charge sheeted accused Kumarpal @ Kurru has already been enlarged on bail by this Court vide order dated 11.8.2023, passed in Criminal Misc. Bail Application No. 30316 of 2023 (Kumarpal @ Kurru Vs. State of U.P.). For ready reference, same is reproduced herein under:

"Heard Mr. Niraj Kumar Tripathi, the learned counsel for applicant, the learned A.G.A. for State and Mr. Dharmendra Kumar Patel, the learned counsel representing first informant.

This application for bail has been filed by applicant-Kumarpal @ Kurru seeking his enlargement on bail in Case Crime No.77 of 2023, under Sections 302, 201 IPC, Police Station Rajpura, District Sambhal, during the pendency of trial.

It transpires from the record that in respect of an incident which is alleged to have occurred on 04.03.2023, a delayed F.I.R. dated 08.03.2023 was lodged by first informant, namely, Karru son of Mahesh (brother of the deceased) and was registered as Case Crime No.0077 of 2023, under Sections 302, 201 IPC, Police Station Rajpura, District Sambhal. In the aforesaid F.I.R., four persons, namely, Dharmendra, Bhole, Netram and Kumarpal @ Kurru (applicant herein) have been nominated as named accused.

The gravamen of the allegations made in the aforesaid F.I.R. is to the effect that deceased accompanied the named accused who went on a tractor for doing the work of labourer. However, the whereabouts of brother of the first informant could not be located since that day he accompanied aforesaid persons i.e. from 04.03.2023. While making search of the missing brother, when they reached near crematorium, they saw that a piece of land had been recently filled with fresh soil. Thereafter, on suspicion, excavation was made and the dead body of the deceased was exhumed. It is thereafter the aforementioned F.I.R. was lodged.

After above mentioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. The inquest (Panchayatnama) of the deceased was conducted. In the opinion of the witnesses of inquest (Panch witnesses), the death of the deceased had occurred on account of the head injuries sustained by him. However, the nature of death of the deceased i.e. whether the same is homicidal or suicidal could not be concluded by the witnesses of inquest. Thereafter, the post-mortem of body of the deceased was conducted. The autopsy surgeon, who conducted the autopsy of the body of the deceased, found following ante-mortem injuries on the body of the deceased :-

"1. Contusion pressed on back of head and fracture of parietal bone.

2. All body covered with mud decomposition staited."

In the opinion of the autopsy surgeon, the death of the deceased had occurred 4-5 days ago and the cause of death was shock and haemorrhage due to head injuries.

During the course of investigation, Investigating Officer examined the first informant and other witnesses including the autopsy surgeon and recorded their statements under Section 161 CrPC. One of the named accused, namely, Bhole was arrested on 10.04.2023. This witness in his statement has narrated the manner of occurrence. According to this witness, the deceased was assaulted by him i.e. Bhole by a Patia (Hadroli). One of the witnesses, namely, Kunwar Pal had witnessed the occurrence of burial of the deceased. Similar is the statement of witnesses Govardhan, Rajendra and Ajay Pal.

Learned counsel for applicant contends that though the applicant is a named accused but he is liable to be enlarged on bail. The present case is a case of circumstantial evidence and, therefore, there is no eye-witness of the occurrence. According to the learned counsel for applicant, the complicity of an accused in a case based on circumstantial evidence is to be examined in the light of parameters laid by the Supreme Court in Sharad Birdhichand Sarda Vs. State of Maharashtra AIR 1984 SC 1622. However, up to this stage, none of the parameters laid down in the aforementioned judgement is satisfied against the applicant. No strong motive for committing the crime in question has emerged against applicant either. Attention of the Court was then invited to the statement of co-accused Bhole. Learned counsel for applicant contends that the role of causing fatal head injury upon the deceased is assigned to named accused Bhole. As per the material collected up to this stage, applicant can be held guilty of committing an offence under Section 201 IPC. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in jail since 22.03.2023. As such he has undergone four months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, except for the facts noted above, no other incriminating circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. He, therefore, 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.

Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since the applicant is a named and charge-sheeted accused therefore, he does not deserve any indulgence by this Court. It is an un-disputed fact that the deceased was last went in the company of the applicant and three others. The criminality committed by the named and charge-sheeted accused which is evident from the statements of the witnesses, referred to above, is joint and common. As such, the same is incapable of being separated or segregated. The inaction on the part of the present applicant in not informing police about the death of the deceased on account of

assault made by co-accused Bhole is clearly unsustainable in view of the provisions contained in Section 39 CrPC. They, therefore, submit that applicant is guilty of disposing of dead body of the deceased. On the above premise, they, therefore, contend that no indulgence be granted by this Court in favour of applicant. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of material brought on record, evidence, complicity of the accused, accusation made, nature and gravity of offence and coupled with the fact that as per the confessional statement of co-accused the fatal assault on the head of the deceased was made by co-accused Bhole, the applicant is guilty of disposing of the dead body of the deceased, the police report i.e. charge-sheet under Section 173 (2) CrPC has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution stands crystallized, however in spite of above the learned A.G.A. nor the learned counsel for first informant could not point out any such circumstance except those mentioned above necessitating the custodial arrest of the applicant during the pendency of trial, the clean antecedents of the applicant inasmuch as he has no criminal history to his credit except the present one, the period of incarceration undergone, the present case is a case of circumstantial evidence, therefore, there is no eye-witness of the occurrence, no strong motive has emerged against the applicant for committing the crime in question, prima facie none of the parameters laid down in Sharad Birdhichand Sarda (supra) for deciding the guilt of an accused in a case based on circumstantial evidence is satisfied against the applicant upto this stage, but without making any comments on the merits of the case, the applicant has made out a case for bail.

Accordingly, the bail application is allowed.

Let the applicant-Kumarpal @ Kurru, 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 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C.

(iii) 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.

(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 him 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.

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. "

5. On the above premise, the learned counsel for applicants submits that case of present applicants are similar and identical to that of named/charge-sheeted but bailed out co-accused Kumarpal @ Kurru. There is no such distinguishing feature on the basis of which case of present applicants can be distinguished from aforesaid co-accused so as to deny them bail. It is thus contended that in view of above for the facts and reasons recorded in the above bail order dated 11.8.2023, present applicants are also liable to be enlarged on bail on the ground of parity.

6. Even otherwise, applicants are men of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicant-Dharmendra is in jail since 20.4.2023 and applicant-Net Ram is in jail since 19.03.2023. As such, they have undergone substantial periods of incarceration. The police report in terms of section 173(2) Cr.P.C. has already been submitted against applicants on 19.5.2023. As such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. It is thus urged 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 trial.

7. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicants are named as well as charge sheeted accused, therefore they do not deserve any indulgence by this Court. Criminality committed by applicants and other co-accused is joint and common, therefore, same is incapable of separation and saggregation. As such, no exception can be carved out in the case of applicants. However, he could not dislodge the factual and legal submissions urged by learned counsel for applicants, with reference to the record at this stage.

8. Having heard the learned counsel for applicants, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature

and gravity of offence as well as complicity of accused, accusation made coupled with the fact that similarly situate and circumstanced named/charge-sheeted co-accused has already been enlarged on bail, the learned A.G.A. could not point out any such distinguishing feature so as to distinguish the case of present applicants from aforesaid co-accused so as to deny them bail, the clean antecedents of the applicants, the period of incarceration undergone, the police report 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 prosecution against applicants stands crystalized, inspite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicants during pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present applications for bail, but without making any comments on the merits of the case, applicants have made out a case for bail.

9. Accordingly, the bail applications are Allowed.

10. Let the applicants-Dharmendra and Net Ram, 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 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.

11. However, it is made clear that any wilful violation of above conditions by the applicants, shall have serious repercussion on their 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 :- 27.10.2023"

It is then contended that as per the confessional statement of named and charge sheeted accused Net Ram, the role of causing fatal head injury upon the deceased is assigned to co-accused Kurru alias Kumarpal who has already been enlarged on bail. Except for the confessional statement of the co-accused Dharmendra, no other incriminating circumstance has yet emerged against applicant to establish the complicity of applicant in the crime in question.

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 20.4.2023. As such, he has undergone more than 6 months of incarceration. The charge sheet having been submitted, therefore, the evidence sought to be relied upon by the prosecution against applicant now stands crystallized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the course of trial. On the above premise, it is thus urged 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore, he does not 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.

Having heard the learned counsel for applicant, the learned A.G.A. for state, upon perusal of material brought on record, nature of offence, evidence, complicity of the accused, accusation made and coupled with the fact that the criminality committed by named and

charge sheeted accused is joint and common, therefore, incapable of separation or segregation, yet three of the named/ charge sheeted accused have already been enlarged on bail, the learned A.G.A. could not point out any such distinguishing circumstance from the record to distinguish the case of the present applicant from other named/charge sheeted accused, so as to deny bail to present applicant, the role of assault (fatal head injury) upon the deceased is assigned to co-accused Kurru alias Kumarpal, as per the confessional statement of co-accused Netram who has already been enlarged on bail, the only incriminating circumstance that has emerged against applicant, is the confessional statement of another co-accused Dharmendra who has assigned the role of assault to applicant, as such the fatal injury sustained by the deceased has not been specified, the clean antecedents of applicant, the period of incarceration undergone, the police report in terms of Section 173 (2) Cr. P. C. has already been submitted, therefore, the evidence sought to be relied upon by the prosecution against applicant now stands crystallized, 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 the applicant during the course of trial. but without making any comment on the merits of the case, the applicant has made out a case for bail.

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

Let the applicant **Bhole** involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with 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 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..

(iii) 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.

(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 him 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.

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 :- 1.11.2023

HSM