

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38956 of 2023

Applicant :- Mukesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Vikas Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Ravi Pandey, Advocate holding brief of Mr. Vikas Srivastava, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Mukesh seeking his enlargement on bail in Case Crime No.107 of 2023, under Sections 365, 302, 201, 34 IPC, police station Crossing Republic, district Ghaziabad, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 21.03.2023, a delayed FIR dated 22.03.2023 was lodged by the first informant, namely, Rinku (brother of the deceased) and was registered as Case Crime No.0107 of 2023, under Sections 365, 34 IPC, police station Crossing Republic, district Ghaziabad. In the aforesaid FIR, three persons, namely, Pappan, Mukesh (applicant herein) and Bhura (brother of Mukesh) have been nominated as named accused, whereas two unknown persons have also been arraigned as accused.

The gravamen of the allegations made in the first information report is to the effect that the named accused along with their associates (not-named accused) abducted the brother of the first informant.

After above-mentioned first information report was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. The dead body of deceased was recovered on 23.03.2023. Thereafter, post mortem of the body of deceased was conducted. In the opinion of autopsy surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was firearm injury and injury over neck caused by sharp single edge heavy cutting weapon. However, viscera was preserved to rule out any intoxication poisoning. The autopsy surgeon found following ante-mortem injuries on her

body, which is explicit from the recital contained at page 66 of the paper book :-

"Neck partial intersection of neck underlying muscles coats bags blood neck cells & bones. Neck is attached to the back bag spine. There is a state of intestine superficial of blood in the underlying muscle tissues. The surrounding muscle tissues superficial is chopped transition of blood underlying substance. The injury over the neck has incised & unconfined margins bracing of the said margins. Mandible due the L side is expressed, due to lung the crossing muscle spin. Contused lacerated and Rt. side forced joint appearance Rt. eye of size 2 x 2 cm x spin deep. Fire arms entry wound of size 2 x 2 cm present out Lt. side injury in the done under laceration fraction Rt. fracturing the partial lobe of harm also Lt. side neck an entry wound of size 3 x 3 cm on rifled ribs. The wound is not surrounded by blackening & signing the neck of the wound is filled in with blood dots."

Subsequently, the named accused Mukesh (applicant herein) and not named accused Prince were arrested on 01.04.2023. On their pointing out, the weapon of assault i.e. .315 bore country made pistol and sharp iron Dab (sharp heavy edged weapon) as well as number plate of Scooty of the deceased were recovered. During the course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 CrPC. Co-accused Pappan in his confessional statement has assigned the role of causing ante-mortem injuries sustained by the deceased to present applicant Mukesh and co-accused Prince. On the basis of above and other material collected by the Investigating Officer during the course of investigation, he came to the conclusion that complicity of five persons, namely, Pappan, Mukesh, Raju @ Bhura, Prince and Mukul is established in the crime in question. He, accordingly, submitted police report under Section 173 (2) CrPC i.e. charge-sheet dated 07.06.2023, whereby aforementioned accused have been charge-sheeted under Sections under Sections 365, 302, 201, 34 IPC.

Learned counsel for applicant contends that though the applicant is a named as well as charge-sheeted accused yet he is liable to be enlarged on bail. There is delay in lodging the FIR which remains un-explained up to this stage. The recovery is doubtful, inasmuch as, the same has been made on the joint pointing out of the applicant and co-accused Prince. There can be no joint recovery. 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. It is further submitted that the only incriminating circumstance that has emerged against the

applicant is the confessional statement of co-accused Pappan as well as the recovery alleged to have been made on the pointing out of the applicant and co-accused Prince. The motive assigned to the present applicant for committing the crime in question is not so strong so as to infer the guilt of the applicant in the crime in question. On the above premise, he thus contends that the applicant is liable to be enlarged on bail.

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 01.04.2023. As such, he has undergone more than six 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. has opposed the prayer for bail. He submits that since applicant is a named and charge-sheeted accused therefore he does not deserve any indulgence by this Court. As per the post-mortem report of the deceased, he had sustained two ante-mortem injuries on his body. The weapon of assault was recovered on the pointing out of the applicant and co-accused Prince can cause the injuries sustained by the deceased. The recovery cannot be doubted at this stage. Up to this stage, no such material has emerged on the record on the basis of which an inference regarding innocence of the applicant can be inferred. It is thus urged that no sympathy be shown by this Court in favour of applicant.

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

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, nature and gravity of offence, evidence, accusation made and coupled with the fact that applicant is a named/charge-sheeted accused, the complicity of applicant has emerged in the confessional statement of co-accused Prince, the recovery with regard to weapons of assault has been made on the pointing out of the applicant and co-accused Prince, there is nothing on record to doubt the recovery, up to this stage no such material has emerged on record on the basis of which the innocence of the applicant can be inferred even though the case in hand is based on circumstantial evidence

therefore, irrespective of the submissions urged by the learned counsel for applicant in support of the present application for bail, this Court finds that no good and sufficient ground is made out to enlarge the applicant on bail.

The application for bail thus fails and is liable to be rejected.

It is accordingly **rejected**.

Order Date :- 17.10.2023.

Rks.