

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39015 of 2023

Applicant :- Rajnesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinay Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Vinay Kumar Srivastava, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Rajnesh, seeking his enlargement on bail in Case Crime No. 200 of 2023, under Section 304 IPC, Police Station-Jaithra, District-Etah during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 16.06.2023, a delayed FIR dated 19.06.2023 was lodged by first informant-Anoj Kumar (husband of the deceased) and was registered as Case Crime No. 200 of 2023, under Section 304 IPC, Police Station-Jaithra, District-Etah. In the aforesaid FIR, three persons namely (1) Rajnesh (i.e. applicant herein), (2) Shivkumar and (3) Anand @ Guddu have been nominated as named accused.

5. Learned counsel for applicant contends that though applicant is a named as well as charge sheeted accused inasmuch as, the charge sheet has been submitted against applicant and Shivkumar on 20.08.202 whereas named accused Anand @ Guddu was exculpated yet applicant is liable to be enlarged on bail.

6. It is next contended that named/charge sheeted co-accused Shiv Kumar has already been enlarged on bail vide order dated 06.09.2023 passed in Criminal Misc. Bail Application No. 39073 of 2023 (Shivkumar Vs. State of U.P.). For ready reference, the order dated 06.09.2023 is reproduced herein under:-

"1. Heard Sri Vinay Kumar Srivastava, learned counsel for the applicant and Sri Ajeet Kumar Madesiya, learned brief holder for the State-respondent.

- 2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 200 of 2023, under Section 304 IPC, Police Station- Jaithra, District- Etah, during pendency of the trial in the court below.*
- 3. FIR of the present case was lodged against applicant, his father and brother under Section 304 IPC and according to the FIR, on 16.06.2023 applicant along with his father and brother made assault upon the informant and his wife and due to assault made by them wife of the informant sustained injuries and in this regard, an NCR was lodged under Sections 323, 504 IPC but on 18.06.2023 during treatment wife of the informant died.*
- 4. Learned counsel for the applicant submitted that totally on the basis of false allegation of assault, applicant has been made accused in the present matter along with his father and brother due to enmity. He further submitted that with regard to the property a dispute is pending between informant and applicant. He further submitted that informant is the real uncle of the applicant and real brother of his father.*
- 5. He further submitted that from the perusal of the post-mortem report, it appears that deceased died due to head injury and there is nothing on record, which can show that applicant is the author of this injury and on the basis of general allegation, he has been roped in the present matter.*
- 6. He further submitted that applicant is not having any criminal history and is in jail since 21.06.2023.*
- 7. Per contra, learned AGA opposed the prayer for bail and submitted that applicant along with his two associates assaulted his aunt and due to assault made by them, she sustained injuries and died but could not dispute the fact that it is a case of Section 304 IPC and it appears from the post-mortem report of the deceased that she died due to head injury and there is nothing on record, which can show that applicant is the author of the head injury of the deceased.*
- 8. I have heard learned counsel for the parties and perused the record of the case.*
- 9. From the record, it appears that applicant is the nephew of the informant and on the basis of general allegation, he has been roped in the present matter along with his father and brother and post-mortem report of the deceased suggests that she sustained one lacerated wound on her head and multiple abrasions on the abdomen and although, informant is the eye-witness of the case but from his statement, it appears that applicant and two others made assault through wooden sticks, therefore, it appears that, multiple abrasions sustained by the deceased on her abdomen has not been explained by the informant, the alleged eye-witness.*
- 10. Further, from the post-mortem report of the deceased, it appears that she died due to head injury and there is no evidence on record, which can show that applicant is the author of this injury.*
- 11. Therefore, considering the facts and circumstances of the case*

discussed above, in my view applicant is entitled to be released on bail.

12. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

13. Let the applicant- Shivkumar be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

14. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

15. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial"

7. According to the learned counsel for applicant, the case of the present applicant is similar and identical to that of named/charge sheeted co-accused Shivkumar, who has already been enlarged on bail. There is no such distinguishing feature on the basis of which, the case of present applicant could be so distinguished from aforementioned co-accused so as to deny him bail. He, therefore, submits that in view of above and for the facts and reasons recorded in the bail order of aforementioned co-accused Shivkumar, applicant is also liable to be enlarged on bail on the ground of parity.

8. According to the learned counsel for applicant, the deceased sustained as many as 5 ante-mortem injuries on his body. However, except for Injury No. 1, which is lacerated wound, the deceased has not sustained any grievous or fatal injury on his person. He, therefore, submits that there was no calculated *mens rea* with the applicant and the charge sheeted co-accused to commit the crime in question nor the occurrence giving rise to the present criminal proceedings is the outcome of any pre-planned act of the applicant. Applicant and the husband of the deceased are real brothers. The suffle had taken place at the spur of the

moment, therefore, criminality, if any, committed by the applicant shall amount to culpable homicide not amounting to murder. As such, the same is covered under the 4th exception to Section 300 IPC.

9. 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 21.06.2023. As such, he has undergone more than 3 and 1/2 months 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.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named/charge sheeted accused, therefore, he does not deserve any indulgence by this Court. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that similar situate and circumstanced co-accused Shivkumar has already been enlarged on bail, the learned A.G.A. could not point out any such circumstance from the record distinguishing the case of present applicant from named/charge sheeted co-accused Shivkumar so as to deny bail to present applicant, 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 entire evidence sought to be relied upon by the prosecution against applicant 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 applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

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

13. Let the applicant-Rajnish, 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/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.

14. 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.