

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38961 of 2023

Applicant :- Munna Mishra @ Santosh Mishra

Opposite Party :- State of U.P.

Counsel for Applicant :- Rahul Kumar Tripathi

Counsel for Opposite Party :- G.A., Ratnesh Kumar Pathak

Hon'ble Rajeev Misra, J.

Heard Mr. Rahul Kumar Tripathi, the learned counsel for applicant, the learned A.G.A. for State and Mr. Manvendra Singh, the learned counsel representing first informant.

This application for bail has been filed by applicant Munna Mishra @ Santosh Mishra seeking his enlargement on bail in Case Crime No.129 of 2023, under Sections 302, 201, 120-B IPC, police station Rampur, district Jaunpur, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 06.07.2023, a delayed first information report dated 14.07.2023 was lodged by the first informant, namely, Dheeraj Yadav (son of the deceased) and was registered as Case Crime No.0129 of 2023, under Sections 302, 201 IPC, police station Rampur, district Jaunpur. In the aforesaid FIR, one person, namely, Vipin has been nominated as solitary named accused.

It is apposite to mention here that the occurrence giving rise to present criminal proceeding occurred on 06.07.2023, whereas the dead body of the deceased was recovered on 10.07.2023. However, the inquest (Panchayatnama) of body of the deceased was conducted on the same day i.e. 10.07.2023. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of the deceased was categorized as homicidal and the cause of death was said to be ante-mortem injury sustained by the deceased. Thereafter, post-mortem of the body of deceased was conducted on 13.07.2023. The autopsy surgeon, who conducted autopsy of body of the deceased, opined that the cause of death of the deceased is hemorrhagic shock as a result of ante-mortem injury. The autopsy surgeon, found following ante-mortem injuries on the body of deceased, which is explicit from the recital contained at page 26 of the paper book :-

"Ante-mortem injury :

Head and neck amputated and missing from body.

- Both hand c scapular region amputated and muscles missing only skeletal of both hand present.**
- whole body swelling, four smell coming and decomposition start.**
- both leg of ankle joint totie of rope."**

It is after the proceedings of inquest and post-mortem were conducted that the aforementioned first information report was lodged.

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 named accused Vipin was arrested on 16.07.2023. The said accused Vipin in his confessional statement has stated that the alleged crime was committed by him on the aspiring of present applicant. Resultantly, the complicity of present applicant surfaced in the crime in question and he was arrested on 17.07.2023.

During the course of investigation, Investigating Officer examined first informant and following witnesses, namely, Dheeraj Yadav, Ujala Yadav, Mangla Prasad, Arjun Gautam, Santosh Kumar Gautam, Abhimanyu Yadav, Dharmendra Yadav under Section 161 CrPC. However, the family members of the deceased have denied the complicity of present applicant in the crime in question. They have shown their ignorance regarding acquaintance of the deceased with the present applicant in any manner.

Learned counsel for applicant contends that the applicant is innocent. Applicant is not named in the first information report. Though applicant is a charge-sheeted accused, inasmuch as, the charge-sheeted has been submitted against applicant on 07.08.2023, whereby applicant has been charge-sheeted under Sections 302, 201, 120-B IPC, police station Rampur, district Jaunpur yet he is liable to be enlarged on bail. As per the confessional statement of named accused Vipin, applicant is said to be the conspirator of the crime in question. In the submission of the learned counsel for applicant, conspiracy is a closed door affair and, therefore, subject to trial evidence. Except for the above, there is no other incriminating circumstance pointing out the guilt of the accused in the crime in question. The family members of the deceased have however shown ignorance about the fact that applicant was having relationship with the deceased.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 17.07.2023. As such he has

undergone three months of incarceration. The police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. Up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. The applicant is in jail since 17.07.2023. As such, he has undergone more than two and half months of incarceration. 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 opposed the prayer for bail. They submit that though applicant is not named in the first information report but a charge-sheeted accused therefore, he does not deserve any indulgence by this Court. 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, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that applicant is not named in the first information report, the complicity of applicant in the crime in question has emerged in the confessional statement of the named accused Vipin wherein the applicant is alleged to be the conspirator of the crime, conspiracy is a closed door affair and therefore the same is subject to trial evidence, the witnesses examined under Sections 161 CrPC including the relatives of the deceased have pleaded ignorance regarding acquaintance or any relationship of the applicant with the deceased, in spite of the fact that the police report under Section 173(2) CrPC i.e. charge-sheet has been submitted as such the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized yet the learned A.G.A. nor the learned counsel or first informant could point out from the record any such circumstance necessitating the custodial arrest of applicant during the pendency of trial, the clean antecedents of the applicant, the period of incarceration undergone, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to the present application for bail 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 **Munna Mishra @ Santosh Mishra**, 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 :- 17.10.2023.

Rks.