

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39450 of 2023

Applicant :- Rahul Gupta @ Vikas Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Narendra Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

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

Perused the record.

This application for bail has been filed by applicant Rahul Gupta @ Vikas Kumar seeking his enlargement on bail in Case Crime No. 448 of 2022, under Sections 302 IPC, P.S. Kotwali, District Fatehpur, during the pendency of trial.

Learned counsel for applicant submits that applicant is not named in the F.I.R. Applicant is innocent. Applicant was subsequently implicated in the crime in question as per the statement of the first informant Prabhat Kumar Gupta. The recovery of a kitchen knife is alleged to be made on the pointing of applicant. On the basis of above, applicant was charge sheeted, vide charge sheet dated 23.9.2023.

It is next contended that trial has already commenced and three witnesses including the first informant P.W. 1 Prabhat Kumar Gupta, P.W. 2 Shiv Autar, brother of the deceased and P.W. 3 Maya Devi, mother of the deceased have been examined, but they have not supported the charge sheet. He, therefore, contends that in view of above, applicant is liable to be enlarged on bail.

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 02.07.2023. As such, he has undergone 4 months of incarceration. The charge sheet having been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant now stands crystallized, yet no 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, 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 applicant has criminal history of two cases i.e. Case Crime No. 73 of 2017, under Sections 147, 148, 149, 307, 323, 392, 504, 506 IPC and Case Crime No. 76 of 2017, under Sections 323, 504, 506 IPC. However, the learned A.G.A. further submits that since the applicant is a charge sheeted accused, therefore, no indulgence be granted by this Court in favour of applicant. 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 though applicant has criminal history of two cases, however, considering the three judges Bench judgement of Supreme Court in **Brijmani Devi Vs. Pappu Kumar and another, (2022) 4 SCC, 497**, this Court finds that mere criminal history will not be a bar to grant bail to the applicant, the three prosecution witness of fact examined upto this stage i.e. P.W. 1, P.W. 2 and P.W. 3 have not supported the charge sheet, therefore, the clean antecedents of applicant, the period of incarceration undergone, the police report having been submitted, therefore, no good ground exists to prolong the custodial arrest of applicant the entire 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, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373**, therefore, irrespective of objections raised by the learned A.G.A., in opposition to the present application for bail, 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 **Rahul Gupta @ Vikas Kumar** 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