

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39658 of 2023

Applicant :- Gulab Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Aditya Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Aditya Yadav, 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- Gulab Singh seeking his enlargement on bail in Case Crime No. 259 of 2017, under sections 302 IPC, Police Station- Akbarpur, District Kanpur Dehat., now pending in the Court of Additional Sessions judge, Court No.6, Kanpur Dehat.

4. Record shows that in respect of an incident which is alleged to have occurred on 31.3.2017, a prompt FIR dated 31.3.2017 was lodged by first informant-Raj Singh (brother of applicant/son of deceased) and was registered as Case Crime No. 259 of 2017, under section 302 IPC, Police Station- Akbarpur, District Kanpur Dehat. In the aforesaid F.I.R. an unknown person has been nominated as solitary named accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that Badlu Prasad aged about 90 years, father of first informant, after having his dinner on 31.3.2017 went to the tubewell as usually done by him. When the first informant went to harvest the crop in the morning, on the next day, he saw his father lying dead on floor and there was an incised wound on his neck caused probably by a knife.

6. After aforesaid F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. The inquest (panchayatnama) of the body of deceased was conducted on 31.3.2017 itself. In the opinion of the witness of inquest (panch witnesses), the nature of death of deceased was categorized as homicidal and the cause of death was opined as incised wound,

caused upon deceased by an unknown person. Subsequently post mortem of the body of deceased was conducted. The autopsy surgeon, who conducted autopsy of the body of deceased opined that cause of death of deceased was shock and hemorrhage as a result of ante-mortem injuries. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

"Incised wound 2 x 1 cm on left side of neck 3 cm above the clavicle 10 cm, deep

Abraded wound 2 x 1 cm 12 cm above the right ankle joint"

7. During course of investigation, Investigating Officer examined first informant on 31.3.2017. However, in the aforesaid statement, the first informant has not implicated the applicant in the crime in question. Thereafter, the second statement of first informant was recorded on 16.4.2017, wherein the name of applicant surfaced in the crime in question. This was followed by the statement of another brother of applicant, Kapoor Singh, whose statement was recorded under section 161 Cr.P.C. on 16.4.2017, followed by the statement of third brother of applicant namely- Gyan Singh, whose statement was recorded under section 161 Cr.P.C. on 15.5.2017 and lastly that of Sohan Singh, also the brother of applicant, whose statement was recorded under section 161 Cr.P.C. on 19.5.2017. The three brothers of applicant have concurred with the second statement of first informant referred to above.

8. It is apposite to mention here that after the second statement of first informant was recorded, applicant was arrested on 21.4.2017. Thereafter it is alleged that on the pointing of applicant the weapon of assault used in the commission of crime was recovered on 21.4.2017 i.e. after 28 days of occurrence on the pointing of applicant, from the vicinity of the tube-well. At this stage, it is relevant to refer to the recovery memo, copy of which is on record at page 72 of the paper book. The recovery memo does not indicate the nature of place from where the recovery was made i.e. whether it was an open place or a place subjected to controlled ingress or egress. The motive that has emerged against applicant for having committed the crime in question is that applicant is a widower. Subsequently, the father of applicant in the proceedings of panchayat agreed to transfer land to the son of applicant but not to heirs. It is on account of above that applicant committed the crime in question. On the basis of above and other material collected by Investigating Officer, during course of investigation he came to the conclusion that complicity of applicant is established in the crime in question. He, accordingly submitted the charge sheet

dated 23.5.2017, whereby applicant has been charge sheeted under section 302 IPC.

9. After above mentioned charge sheet was submitted, cognizance was taken upon same by concerned Magistrate. As offence complained of is exclusively triable by Court of Sessions, accordingly concerned Magistrate, committed the case to the Court of Sessions. Charges were framed against accused. The prosecutrix in discharge of it's burden to establish the charge so framed has adduced nine witnesses, upto this stage, even though 16 prosecution witnesses have been nominated in the charge sheet.

10. On the above premise, it is urged by the learned counsel for applicant that though applicant is not named but charge sheeted accused, yet he is liable to enlarged on bail. Present case is a case of circumstantial evidence. Therefore there is no eye witness of the occurrence. The complicity of an accused in a case based on circumstantial evidence has to be inferred in accordance with the parameters laid down by Apex Court in **Sharad Birdhichand Sarda, Vs. State of Maharashtra, AIR 1984 Supreme Court 1622**. However, up to this stage, none of the parameters laid down by Apex Court in aforementioned judgment are satisfied against applicant. Complicity of applicant in the crime in question has emerged in the second statement of first informant recorded on 16.4.2017. However, no explanation has come forward from the first informant regarding omission in the first statement of the first informant. Moreover, no explanation has been offered as to on what basis the complicity of applicant is sought to be alleged in the crime in question in the second statement of the first informant which was recorded after 16 days of the first statement. It is thereafter that the applicant was arrested on 21.4.2017. After the applicant was arrested, his brothers namely, Kapoor Singh, Gyan Singh, Sohan Singh have also given their statements under section 161 Cr.P.C. which is similar to the second statement of first informant. The statements of these witnesses is parrot like description and therefore, unworthy of credit. Admittedly, the statements were recorded after more than two or three weeks from the date of occurrence. Referring to the judgment of the Supreme Court in **Shahid Khan Vs. State of Rajasthan, (2016) 4 SCC 96**, the learned counsel for applicant contends that the brothers of the applicant alleged themselves to be the eye witness of the occurrence but their statements were recorded with delay. Therefore, the same are unworthy of reliance. The second incriminating circumstance that has emerged against applicant is the recovery of knife alleged to have been made on the pointing of applicant. Learned counsel for applicant submits that the said recovery has been made from

the place of occurrence after 28 days of occurrence. The recovery memo is at page 25 of the paper book. However, the same does not indicate the exact place of recovery, nor it is evident from the recovery memo that the place from where the recovery was made is an open place or subject to controlled ingress and egress. As such, the recovery is false. Same is implanted and hence not worthy of reliance. According to the learned counsel for applicant the motive which has been assigned to applicant for committing the crime in question is by itself not so strong so as to infer the guilt of the applicant in the crime in question. It is alleged that in the Panchayat the father of the applicant agreed to transfer part of his holding in favour of the sons of the applicant but not the applicants. However, the applicant is alleged to have demanded transfer of land in his favour during the lifetime of father. As the father did not accede to this request, the applicant is alleged to have committed his murder. In the submission of the learned counsel for applicant, admittedly, the father of the applicant was aged about 90 years and upon his death, the succession shall automatically take place in his favour by virtue of the provisions contained in U.P. Revenue Code, 2006. Attention of the Court was then invited to the judgment of Supreme Court in **Nandu Singh Vs. State of Madhya Pradesh, 2022 SCC OnLine SC 1454** wherein it has been held that motive plays an important role in a case based on circumstantial evidence as it is an important link in the chain of circumstances. Learned counsel for applicant thus contends that since no strong motive has emerged against applicant for committing the crime in question, therefore, the applicant is liable to be enlarged on bail. It is the lastly submitted that applicant was arrested on 21.4.2017 and the trial has commenced. There are 16 witnesses nominated in the charge sheet. However, up to this stage only nine witnesses have been examined. Referring to the judgement of Supreme Court in **A.R. Antulay Vs. R.S. Nayak, 1992 (1) SCC 225**, the learned counsel for applicant submits that accused also has the right to speedy trial. Since applicant is in custody, he cannot be held responsible for the delay in the conclusion of trial. Applicant was arrested on 21.04.2017 and the trial of the applicant also commenced in the year, 2017. However, in spite of the fact that a period of more than 6 years has rolled by, the trial of the applicant has not yet concluded. Up to this stage, only 9 witnesses have been examined whereas there are 16 prosecution witnesses nominated in the charge sheet. As such, the trial is proceeding at a snail's pace. It is thus urged that in view of above, the applicant be enlarged on bail, as applicant cannot be made to suffer on account of lackadaisical approach of the prosecution in pursuing the trial.

11. 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 21.4.2017. As such, he has undergone more than seven months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by 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 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.

12. 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. According to the learned A.G.A., since the trial of the applicant has already commenced and proceeded substantially, therefore, interest of justice shall be served in case, a direction is issued to court below to conclude the trial itself within a time bound period instead of enlarging the applicant on bail. However, he could not dislodge the factual and legal submissions urged by learned counsel for applicant with reference to the record at this stage.

13. Having heard the learned counsel for applicant, 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 applicant, accusation made coupled with the fact that present case is a case of circumstantial evidence, therefore, there is no eye witness of the occurrence, the guilt of an accused in a case based on circumstantial evidence has to be inferred in accordance with the parameters laid down by Apex Court in **Sharad Birdhichand Sarda (Supra)**, however, up to this stage, none of the parameters laid down in aforementioned judgment are satisfied against applicant, the motive that has emerged against applicant for committing the crime in question, is by itself not so sufficient so as to infer the guilt of the applicant, motive plays an important link in the chain of circumstances in a case based on circumstantial evidence vide **Nandu Singh (Supra)**, the recovery of alleged weapon of assault on the alleged pointing of applicant after 28 days of occurrence is by itself insufficient to infer the guilt of applicant in the crime in question inasmuch as, according to the recovery memo the exact place of recovery is not ascertainable and secondly it is not clear whether the recovery was made from an open place or from a place which had controlled ingress and

egress, the trial has already commenced against applicant in the year 2017, though a period of almost seven years has rolled by but only 9 prosecution witnesses out of 16 prosecution witnesses nominated in the charge-sheet have been examined up to this stage, thus the trial is proceeding at a snail's pace, an accused also has a right of speedy trial vide judgement of the Supreme Court in **A.R. Antulay (Supra)**, the period of incarceration undergone, the clean antecedents of applicant, the police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating custodial arrest of applicant during pendency of trial, the judgement of the Supreme Court in **Sumit Subhaschandra Gangwal and another Vs. The state of Maharashtra and Another, 2023 Live law (SC) 373 (Paragraph 5)**, therefore, irrespective of the 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.

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

15. Let the applicant **Rahul Gupta** 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.

16. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her 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 :- 20.11.2023

Arshad