

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39466 of 2023

Applicant :- Bhupendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Shyam Lal, Abhilasha Singh, Ashutosh Yadav

Counsel for Opposite Party :- G.A., Ambikesh Kumar Sharma

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40041 of 2023

Applicant :- Chhote @ Vedpal

Opposite Party :- State of U.P.

Counsel for Applicant :- Shyam Lal, Abhilasha Singh, Ashutosh Yadav

Counsel for Opposite Party :- G.A., Ambikesh Kumar Sharma

Hon'ble Rajeev Misra, J.

1. Heard Mrs. Abhilasha Singh, the learned counsel for applicants- Bhoopendra and Chhote @ Vedpal, the learned A.G.A. for State and Mr. Ambikesh Kumar Sharma, the learned counsel representing first informant, who has filed counter affidavit on behalf of the first informant in Court today in Criminal Misc. Bail Application No. 39466 of 2023 (Bhupendra Vs. State of U.P.), which is taken on record.

2. Perused the record.

3. These applications for bail have been filed by applicants- Bhoopendra and Chhote @ Vedpal, seeking their enlargement on bail in Case Crime No. 251 of 2022, under Sections 147, 148, 338, 302, 201, 364, 120-B, 34 IPC, Police Station-Rajpura, District-Sambhal during the pendency of trial.

4. At the very outset, the learned counsel for applicants contends that except for Section 338 IPC, co-accused Chhote @ Vedpal has been enlarged on bail by this Court vide order dated 07.08.2023 passed in Criminal Misc. Bail Application No. 32955 of 2023

(Chhote @ Vedpal Vs. State of U.P.). For ready reference, the order dated 07.08.2023 is reproduced herein under:-

"1. Heard learned counsel for the applicant as well as the learned AGA for the State and perused the material placed on record.

2. The instant bail application has been filed on behalf of the applicant, Chhote @ Vedpl, with a prayer to release him on bail in Case Crime No. 251 of 2022, under Sections 147, 148, 328, 302, 201, 364, 120-B, 34 IPC, Police Station Rajpura, District- Sambhal, during pendency of trial.

3. There is allegation in the FIR that father of the informant, Sahab Singh, was standing outside his house on 24.7.2022 at about 06:00 p.m., when Hetram, s/o Punni, Subhash, s/o Hetram, Chhote, s/o Hetram, Bhupendra, s/o Hetram, Rakesh, s/o Hetram, Girish, s/o Hetram and Raj Kumar, s/o Rajaram came in a vehicle and pulled his father inside. When the informant chased them, they took him to their house and took out his eyes from knife and imputed his tongue. When the informant tried to stop their car, they tried to crush him and he suffered serious injuries. They murdered his father and threw him on the way.

4. Learned counsel for the applicant has submitted that on 28.7.2022, co-accused, Hetram, Ram Kumar and Bhupendra, were arrested and on the pointing out of co-accused, Hetram, blood stained sariya was recovered from his house. The investigation was transferred from District Sambhal to District Muradabad. From the statements of witnesses, Ranjeet Singh, Shastri, Ram Khiladi Singh, Omprakash, Vinod and Gopal, it was found that co-accused, Girish, is minor and he alongwith Rakesh had gone to village Chiroli and co-accused, Subhash, was present on petrol pump, where he is a salesman. Other witnesses also testified that Subhash is salesman at petrol pump and co-accused, Rakesh and Girish, were not present at the time of incident. After investigation, charge-sheet was submitted against the applicant, co-accused, Hetram, Bhupendra and Ram Kumar. On the application of the informant, further investigation was ordered. In supplementary statement of Dr. Manmohan Sharma, he stated that injuries sustained by the deceased caused by accident by way of falling. The injuries of injured, Mahendra Pal, was found to be simple. After conclusion of investigation, the Investigating Officer observed that the deceased got entangled with the Bolero car and he was dragged with car and subsequently died.

5. Learned counsel for the applicant has submitted that it is a case of false implication. The correct fact is that when Bhupendra reached in front of the house of the deceased in his car, the deceased and his brother stopped his four wheeler and started abusing and quarreling. Mahendra Pal caught hold of collar of Bhupendra and tried to pull him out. It appears that when the deceased, Shahab Singh, came before Bhupendra and tried to escape his son from him, the deceased was got entangled with the car and was dragged. She has pointed out to the site plan prepared by the Investigating Officer, which shows that the deceased was dragged for quite long distance and blood has been found all along of path wherefrom the car came from the scene of incident to the place of accused persons. The dead body was

discovered trapped beneath the car and it was discovered only when the car reached the house of accused persons. Learned counsel for the applicant has pointed out to the injury report of the deceased, which shows that out of 11 injuries suffered by the deceased, 9 injuries were abrasions on different parts of his body. The stab wound was present on his left eye extending up to right posterior parietal region of scalp. Fracture of lateral orbital bone and fracture of posterior right parietal bone was seen. One laceration on right elbow joint is found. His tongue was not imputed, but the doctor found tongue bite only.

6. Learned counsel for the applicant has submitted that the deceased was not done to death. The dispute took place before his house in the night. He accidentally got entangled with the car and co-accused, Bhupendra, did not noticed him since he was being beaten by injured. In order to save himself he drove towards his house in hurry.

7. Lastly, learned counsel for the applicant has submitted that no definite role has been assigned to applicant anywhere in the alleged incident. The applicant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 26.7.2022. In case, the applicant is released on bail, he will not misuse the liberty of bail.

8. Learned counsel for the applicant has filed supplementary affidavit bringing on record the statement of the daughter-in-law of deceased wherein she has stated that co-accused, Bhupendra, came before her house in car, he was stopped by the deceased and Mahendra. Thereafter, dispute started between them. Subsequently, stones were thrown on windscreen of the car and someone hit the car from behind. Thereafter crowd gathered and commotion took place. Bhupendra started the car and tried to run. When he left the scene of incident it was found that the deceased is not on place, where he was standing. Thereafter the dead body of her father-in-law was found besides the road. She has submitted that deceased accidentally got tangled with the car and died.

9. Learned counsel for the informant has opposed the prayer for bail of the applicant and has submitted that it is a case of planned murder. The applicant and co-accused caused the murder of the deceased and threw his dead body besides the road. They have stated that the injuries suffered by the deceased were caused on account of beating by Saria which was recovered on the pointing of co-accused, Hetram. The implication under Section 34 IPC has also been made. Hence applicant does not deserves to be enlarged.

9. Per contra learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserves any indulgence. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

10. After hearing rival contentions and going through the case diary placed before this Court by learned AGA, this Court finds that the Investigating Officer has, after investigation, found that three co-accused, namely, Rakesh, Girish and Subhash, were falsely implicated in this case. These

persons was not found on the place of incident. Hence the prosecution story alleged in the FIR comes under the doubt. Secondly, the site plan prepared by the police shows that from the place of incident to gallery of the house of accused, drops of blood were found in the way. Had the deceased been beaten in the gallery of the house of the accused persons, drops of blood in the way could never to have been found. Thirdly no specific role has been assigned to the applicant nor any recovery of incriminating material has been made from him. He has been generally implicated with all the accused persons and three of them have been exonerated. Fourthly this is first implication of the applicant and he is in jail for more than one year. Finally trial has not commenced as yet. It will take time to conclude.

11. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant; keeping in view uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022 and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime be released on bail 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 that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

12. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

13. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted"

5. Learned counsel for applicant thus contends that since applicant has been enlarged on bail under the principal Sections, he liable to be enlarged on bail under Section 338 IPC.

6. On the above premise, it is urged by the learned counsel for applicant that the case of applicant-Bhupendra is similar and identical to that of co-accused Chhote @ Vedpal. There is no such distinguishing feature on the basis of which, the case of applicant-Bhupendra could be so distinguished from co-accused Chhote @ Vedpal in respect of the charging Sections in which, he has already been enlarged on bail. It is thus urged that in view of above and for the facts and reasons recorded in the bail order of co-accused Chhote @ Vedpal, applicant is also liable to be enlarged on bail on the ground of parity.

7. Even otherwise, applicants are men of clean antecedents inasmuch as, they have no criminal history to their credit except the present one. Applicant-Bhupendra is in jail since 28.07.2022 and applicant-Chhote @ Vedpal is in jail since 26.07.2022. As such, they have undergone substantial period 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 applicants stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicants during the pendency of trial. On the above premise, he submits that applicants are liable to be enlarged on bail. In case, the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

8. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicants are named and charge sheeted accused, therefore, they do not deserve any indulgence by this Court. It is further submitted that the deceased had sustained as many as 11 injuries on his person. Considering the nature and numbers of injuries sustained by the deceased, no sympathy be shown by this Court in favour of applicants. Criminality committed by the named/charge sheeted accused i.e. applicants is joint and common. As such, no exception can be carved out in the

case of present applicants. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

9. Having heard, the learned counsel for applicants, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that co-accused Chhote @ Vedpal has already been enlarged on bail under most of the charging Sections except Section 338 IPC, the case of applicant-Bhupendra is similar and identical to that of aforementioned co-accused Chhote @ Vedpal in respect of the same charging Sections, the learned A.G.A. and the learned counsel representing first informant could not point out any such distinguishing feature from the record distinguishing the case of applicant-Bhupendra from co-accused Chhote @ Vedpal so as to deny him bail, the clean antecedents of applicants, 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. and the learned counsel representing first informant 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. and the learned counsel representing first informant in opposition to the present applications for bail, but without making any comments on the merits of the case, applicants have made out a case for bail.

10. Accordingly, the bail applications are **allowed**.

11. Let the **applicants-Bhoopendra and Chhote @ Vedpal**, be released on bail in the aforesaid case crime number on their 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.

12. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on their 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

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