

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40071 of 2023

Applicant :- Sitanjali

Opposite Party :- State of U.P.

Counsel for Applicant :- Brijesh Kumar Mishra

Counsel for Opposite Party :- G.A., Sanjay Tiwari

Hon'ble Rajeev Misra, J.

Heard Mr. B.K. Mishra, the learned counsel for applicant, the learned A.G.A. for State and Mr. R.K. Paramhansh, Advocate, holding brief of Mr. Sanjay Tiwari, the learned counsel representing first informant.

Perused the record.

This bail application has been filed by the applicant Sitanjali seeking her enlargement on bail in Case Crime No. 195 of 2023, under Sections 302, 201, 34, 120B IPC, P.S. Gida, District Gorakhpur, during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred on 7.4.2023, a delayed F.I.R. dated 8.4.2023 was lodged by first informant Ram Preet Vishwakarma and was registered as Case Crime No. 195 of 2023, under Sections 302, 201, 34, 120B IPC, P.S. Gida, District Gorakhpur. In the aforesaid F.I.R., an unknown person has been arraigned as solitary accused.

At the very outset, learned A.G.A. submits that after completion of statutory investigation of concerned case crime number, Investigating Officer submitted the charge sheet dated 4.7.2023, whereby three persons i.e. Sitanjali (applicant herein), Brij Mohan alias Jheenak and Abhisekh Chauhan, have been charge sheeted under Section 302, 201, 34, 120 B IPC.

At the very outset, the learned counsel for applicant submits that charge sheeted co-accused Brij Mohan alias Jheenak has been enlarged on bail by this Court, vide order dated 14.7.2023 passed in Criminal Misc. Bail Application No. 28686 of 2023 (Brij Mohan alias Jheenak Vs. State of U.P.). For ready reference, same is reproduced herein under:-

"1. Heard Sri Manish Gupta, learned counsel for the applicant, Sri Shyam Kishor Tiwari, Advocate holding brief of Sri Anand Kumar Pandey, learned counsel for the informant and Sri Suresh Bahadur Singh, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 0195 of 2023, under Sections 302, 201, 120B, 34 IPC, Police Station GIDA, District Gorakhpur during pendency of the trial.

3. FIR of the present case was lodged against unknown person and according to the FIR in the intervening night of 6/7.04.2023 some unknown person committed the murder of the son of the informant.

4. Learned counsel for the applicant submitted that FIR of the present case was lodged against unknown person but when the first statement of the informant was recorded under Section 161 Cr.P.C. then he stated that applicant who is brother of his son-in-law (Damad) was having illicit relationship with the wife of the deceased. He further submits that during investigation informant and his family members informed that due to illicit relationship with the wife of deceased applicant along with his wife committed his murder. He further submits that except the allegation against the applicant that he was having illicit relationship with the wife of deceased there is no other evidence against the applicant on record.

5. He further submits that during investigation the statement of the sister of the deceased was also recorded which has been annexed with the instant bail application and she in her statement stated that since 04.04.2023 applicant was in Delhi, therefore, from this angle also it appears that implication of the applicant in the present matter is totally false as at the time of the murder of the deceased applicant was in Delhi. He next submits that applicant is not having any criminal history and in the present matter he is in jail since 10.04.2023.

6. Per contra, learned AGA and learned counsel for the informant opposed the prayer for bail but fairly conceded that except the motive that applicant was having illicit relationship with the wife of deceased there is no other evidence against the applicant on record.

7. I have heard learned counsel for the parties and perused the record of the case.

8. Considering the fact that in the present matter except the evidence that applicant was having illicit relationship with the wife of the deceased there is no evidence against the applicant on record, in my view, applicant is entitled to be released on bail.

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

10. Let the applicant - Brij Mohan Alias Jheenak 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.

11. 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.

12. 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."

Another charge sheeted co-accused Abhishek Chauhan has been enlarged on bail by this Court, vide order dated 9.8.2023 passed in Criminal Misc. Bail Application No. 33751 of 2023 (Abhishek Chauhan Vs. State of U.P.). For ready reference, same is reproduced herein under:-

"Heard learned counsel for the applicant and learned A.G.A.

The instant bail application has been filed on behalf of the applicant, Abhishek Chauhan, with a prayer to release him on bail in Case Crime No. 195 of 2023, under Sections 302,201,34,120-B IPC Police Station Geeda, District- Gorakhpur, during pendency of trial.

There is allegation in the First Information Report that co-accused, Brij Mohan was having affair with wife of the deceased. It is alleged that the applicant alongwith wife of the deceased had caused murder of the deceased. No role has been assigned to the applicant. He has no motive of committing the offence. Co-accused, Brij Mohan alias Jheenak has already been enlarged on bail vide order dated 14.7.2023 in Criminal Misc. Bail Application No. 28686 of 2023. The applicant is in jail since 15.4.2023 and has no criminal history.

Learned A.G.A. has opposed the bail prayer of the applicant but could not dispute the aforesaid facts.

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the 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 trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed

Let the applicant 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
4. That the applicant shall not, directly or indirectly, make any 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 to any police officer;
5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 to ensure presence of the applicant.
6. 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

It is then contended that the role of causing strangulation upon the deceased is assigned to aforementioned charge sheeted but bailed out co-accused. As such, the case of present applicant is on better footing than aforementioned charge sheeted but bailed out co-accused. Attention of the Court was then invited to the provisions contained in proviso to Section 437 Cr. P. C. On basis thereof, it is

urged that since applicant is a lady, therefore, she is entitled to the benefit of bail. On the above conspectus, the learned counsel for applicant submits that since two of the charge sheeted co-accused have already been enlarged on bail and there being no such distinguishing feature in the case of present applicant to distinguish her case from bailed out co-accused so as to deny her bail, therefore, in view of above and for the facts and reasons recorded in the bail orders of co-accused, applicant is also liable to be enlarged on bail.

Even otherwise, applicant is a woman of clean antecedents inasmuch as she has no criminal history to her credit except the present one. Applicant is in jail since 10.4.2023. As such, she has undergone more than six 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, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. It is thus urged that applicant is liable to be enlarged on bail. In case, applicant is enlarged on bail, she 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 vehemently opposed the prayer for bail. They submit that since applicant is a charge sheeted accused, therefore, no indulgence be granted by this Court in favour of applicant. According to the learned A.G.A. certain recoveries were made on the pointing of applicant, which clearly establish the complicity of applicant in the crime in question. It is further submitted that since criminality committed by the charge sheeted accused is joint and common, therefore, same is incapable of separation or segregation. As such no exception can be carved out in the case of present applicant. They, therefore, submit that no sympathy be shown by this Court in faovur of applicant. However, they could not dislodge the factual and legal submission 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 co-accused who have been assigned the role of causing strangulation upon the deceased have already been enlarged on bail, the role of applicant being that of a conspirator,

conspiracy is a closed door affair and therefore subject to trial evidence, applicant being a lady is entitled to the benefit of the provisions contained in proviso to Section 437 Cr. P. C. 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. and the learned counsel representing first informant could not point out any such circumstance from the record necessitating the custodial arrest of the 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 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 **Sitanjali**, be released on bail in the aforesaid case crime number on her 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 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 her counsel. In case of her absence, without sufficient cause, the trial court may proceed against her under section 229-A I.P.C..

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure 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 her, 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 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on 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 :- 28.10.2023

HSM