

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41193 of 2023

Applicant :- Ravi

Opposite Party :- State of U.P.

Counsel for Applicant :- Arvind Singh

Counsel for Opposite Party :- G.A., Satish Sharma

Hon'ble Rajeev Misra, J.

1. Heard Mr. Arvind Singh, 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-**Ravi** seeking his enlargement on bail in Case Crime No.71 of 2023, under Sections 302, 201 I.P.C., Police Station-Beejpur, District-Sonbhadra during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 14.07.2023, a delayed F.I.R. dated 15.07.2023 was lodged by first informant Pavan Kumar Bharti (father of the deceased) and was registered as Case Crime No.71 of 2023, under Sections 302, 201 I.P.C., Police Station-Beejpur, District-Sonbhadra. In the aforesaid F.I.R. three persons namely Ravi, Shivam alias Mulayam and Mohit Babu have been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that the son of the first informant namely Vijay went in the company of named accused Shivam alias Mulayam on 14.07.2023 but did not return home. Subsequently, a disclosure is alleged to have made by the named accused that the son of the first informant was murdered and the dead body of the deceased was thrown in the dam.

6. After above-mentioned F.I.R. was lodged, the Investigating Officer proceeded with the statutory investigation of concerned case crime number in terms of Chapter XII of Cr.P.C. The dead body of the deceased was recovered in the morning on 15.07.2023 on the pointing of named co-accused Shivam alias Mulayam, who

was present at the place of recovery. Thereafter, the inquest of the deceased (Panchayatnama) was conducted. In the opinion of the witnesses of inquest (Panch Witnesses) the cause of death of deceased was opined as asphyxia as a result of ante-mortem strangulation. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

"Ligature mark present on front of neck only (strangulation) and ligature mark area skin change mark blackish seen."

7. The named co-accused Shivam alias Mulayam was arrested and his confessional statement was recorded by the Investigating Officer. In his confessional statement this accused has clearly admitted the act of strangulating the deceased was performed by him and other co-accused cooperating in throwing the dead body of the deceased in the dam (Rihand Dam). During the course of investigating, Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C. Witness so examined have supported the F.I.R. On the basis of above and other material collected by the Investigating Officer during course of investigation, he came to the conclusion that complicity of named accused is fully established in the crime in question. Accordingly he submitted the charge sheet dated 08.08.2023 against all the named charge sheeted accused under Sections 302, 201 I.P.C.

8. Learned counsel for applicant submits that though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. Present case is a case of circumstantial evidence, therefore, there is no eye-witness of the occurrence. Complicity of an accused in a case based upon circumstantial evidence has to be inferred in accordance with the parameters laid down by the Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra 1984 AIR 1622**. However, upto this stage none of the parameters laid down in aforesaid judgment are satisfied against applicant. The only incriminating circumstance has emerged in the crime in question against the applicant in the confessional statement of co-accused Shivam alias Mulayam. As per the said confessional statement the act of strangulating the deceased is attributable to co-accused Shivam alias Mulayam. Applicant alongwith co-accused Mohit Babu are alleged to have co-operated with aforementioned named accused in throwing the dead body of the deceased in the dam i.e. Rihand Dam. According to the learned counsel for applicant though the confessional statement of co-accused is not admissible in evidence but since the recovery made by the Investigating Officer and the medical

opinion tallies with the confessional statement of the accused, therefore, the said confessional statement cannot be ignored altogether. On the above premise, the learned counsel for applicant submits that the case of present applicant is clearly distinguishable from named/charge sheeted co-accused Shivam alias Mulayam.

9. 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 16.07.2023. As such, he has undergone more than two 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, upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He therefore, contends 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.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The criminality committed by the applicant is joint and common. As such the same is incapable of being separated or segregated. As such, no exception can be carved out in the case of applicant. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, complicity of applicant, gravity and nature of offence and accusation made coupled with the fact that the 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 upon circumstantial evidence has to be inferred in accordance with the parameters laid down by Apex Court in the case of **Sharad Birdhichand Sarda (Supra)** the only incriminating circumstance that has emerged against applicant is the confessional statement of co-accused Shivam alias Mulayam, co-accused is the real brother of the applicant, co-accused in his confessional statement has clearly attributed the act of strangulating the deceased himself, as per the said confessional statement applicant and co-accused Mohit Banu cooperated with aforementioned named accused in throwing the dead body of the deceased in dam (Rihand Dam), therefore the case of present applicant is so distinguishable from

the named/charge sheeted accused Shivam alias Mulayam, 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 inspite of above the learned A.G.A. 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. in opposition to the present application for bail, but without making any comment on the merits of the case, applicant has made out a case for bail.

12. Accordingly, the bail application is **allowed**.

13. Let the applicant- **Ravi**, be released on bail in aforesaid case crime number 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 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.

14. 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 :- 30.10.2023

Imtiyaz