

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40216 of 2023

Applicant :- Shivkaran @ Karan Raidas

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Srivastava

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46176 of 2021

Applicant :- Satyam

Opposite Party :- State of U.P.

Counsel for Applicant :- Shashank Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Rajesh Srivastava, the learned counsel for applicant-Shivkaran @ Karan Raidas and Mr. Shashank Tripathi for applicant-Satyam and the learned A.G.A. for State.

These applications for bail have been filed by applicants Shivkaran @ Karan Raidas and Satyam seeking their enlargement on bail in Case Crime No.527 of 2020, under Sections 392, 504, 376-D, 411 IPC, police station Bithoor, district Kanpur Nagar, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 31.12.2020, a prompt first information report dated 31.12.2020 was lodged by first informant, namely, Shivam Dwivedi (husband of the prosecutrix) and was registered as Case Crime No.0527 of 2020, under Section 392 IPC, police station Bithoor, district Kanpur Nagar. In the aforesaid F.I.R., three un-known persons have been arraigned as accused.

The gravamen of the allegations made in the first information report is to the effect that on 31.12.2020 at around 7.30 p.m. when the first informant along with his wife Preeti Shukla was returning then un-known accused snatched Mangalsutra from the neck of his wife, as well as two mobile phones and a purse.

After aforementioned first information report was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. On the basis of information gathered by the Investigating Officer, he arrested applicant Shivkaran @

Karan Raidas on 22.01.2021. From his person, two stolen mobile phones and a sum of Rs.1,040/- cash was recovered. Subsequently, applicant-Satyam surrendered before the court below on 27.01.2021. However, no recovery has been made on the pointing of applicant Satyam. After completion of statutory investigation of above-mentioned case crime number, Investigating Officer came to the conclusion that complicity of present applicants is established in the crime in question. He, accordingly, submitted the charge-sheet dated 17.03.2021, whereby both the applicants have been charge-sheeted under Sections 392, 504, 376-D, 411 IPC.

After submission of charge-sheet, cognizance was taken upon same by the concerned Magistrate. As offence complained of is cognizable by the court of Sessions, consequently the concerned Magistrate committed the case to the court of Sessions. As a result, Sessions Trial No.1210 of 2021 (State Vs. Satyam and others) came to be registered and is now pending in the court of Additional Sessions Judge, Court No.1, Kanpur Nagar. The present applicants were identified by the first informant in court during the trial proceedings.

Learned counsel for applicants contend that though applicants are charge-sheeted accused yet they are liable to be enlarged on bail. According to the learned counsel, applicants are in jail since 22.01.2021 and 27.01.2021 respectively. As such, they have undergone more than two years and nine months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicants. He, therefore, contends 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.

According to the learned counsel for applicants, the statement-in-chief of PW-1-first informant (Shivam Dwivedi) was concluded on 10.06.2022. Subsequently, a recall application under Section 311 CrPC was filed by co-accused Omji Pal wherein it was prayed that aforesaid witness i.e. PW-1 be recalled. The said application came to be allowed by the court below vide order dated 04.02.2023. However, in spite of above, the first informant is not participating in the trial. Resultantly, notice under Section 350 CrPC has been issued against the first informant. On the above premise, it is thus urged by the learned counsel for applicants that applicants cannot be held to be responsible for delaying the proceedings of trial. It is the prosecution itself which is not seriously pursuing the trial. He, therefore, contends that in view of above and for the facts and circumstances as noted herein-above and also the fact

that first informant himself is not co-operating with the trial therefore, applicants are liable to be enlarged on bail.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since the complicity of applicants in the crime in question has emerged as per deposition of PW-1 (first informant) before court below, therefore applicants do not deserve any indulgence by this Court. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

Having heard the learned counsel for applicants, the learned A.G.A. for State, 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 applicants are in jail since 22.01.2021 and 27.01.2021 respectively as such, they have undergone more than two years and nine months of incarceration, the maximum sentence for an offence under Section 392 IPC is ten years, from the possession of applicant Shivkaran @ Karan Raidas two mobile phones and cash of Rs.1040/- was recovered, no recovery has been made from applicant Satyam, the clean antecedents of the applicants, the period of incarceration undergone, subsequent criminal proceedings have been initiated against applicant Satyam after the first information report giving rise to the present criminal proceeding was lodged, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted as such the entire evidence sought to be relied upon by the prosecution against the applicants stands crystalized, yet in spite of above the learned A.G.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of applicants during the proceeding of trial, PW-1 (first informant) has been recalled by the court below however inspie of notice having been issued he is not appearing before the court as such notice under Section 350 CrPC has been issued against PW-1, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra 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 comments on the merits of the case, the applicants have made out a case for bail.

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

Let the applicants **Shivkaran @ Karan Raidas and Satyam**, involved in aforesaid case crime number, be released on bail on their furnishing 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 applicants shall file an undertaking to the effect that

they 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under section 229-A I.P.C.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under section 82 Cr.P.C., may be issued and if applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under section 174-A I.P.C.

(iv) The applicants 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 applicants 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 them 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 applicants, 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 conditions mentioned above.

Order Date :- 7.11.2023.

Rks.