

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41089 of 2023

Applicant :- Ankit

Opposite Party :- State of U.P.

Counsel for Applicant :- Kapil Tyagi, Gaurav Kakkar

Counsel for Opposite Party :- G.A., Deepak Rana

Hon'ble Rajeev Misra, J.

1. Heard Mr. Gaurav Kakkar and Mr. Kapil Tyagi, the learned counsel for applicant, the learned A.G.A. for State and Mr. Deepak Rana, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Ankit seeking his enlargement on bail in Case Crime No. 355 of 2023 under Sections 302, 201, 34 I.P.C., Police Station-Tronika City, District-Ghaziabad, during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred in between 12.06.2023-13.06.2023, an F.I.R. dated 13.06.2023 was lodged by first informant-Sripal (Father of the deceased) and was registered as Case Crime No. 355 of 2023 under Sections 302, 201, 34 I.P.C., Police Station-Tronika City, District-Ghaziabad. In the aforesaid F.I.R., three persons namely Ankit, Ashish and Sumit @ Bhola have been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R is to the effect that son of the first informant was last seen in the company of the named accused on 11.06.2023 at around 11.00 PM. Thereafter, a search was made in respect of named accused at their

residents but they could not be traced. Subsequently, on 13.06.2023 an information was received by first informant that burnt dead body of the son of first informant is lying in village Abupura. The F.I.R. further concludes with the recital that there is apprehension with the first informant that his son was put to death and thereafter his dead body was burnt by named accused.

6. Prior to the lodging of F.I.R, a missing person report was lodged on 12.06.2023. Subsequently, the dead body of deceased was recovered. Thereafter, inquest (Panchayatnama) of the body of deceased was conducted on 12.06.2023.. In the opinion of the witnesses of inquest (panch witnesses), the nature of death of deceased could not be categorized. However, the cause of death of the deceased was said to be burn injury. Subsequent to above, post-mortem of the body of deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of the deceased, the cause of death of deceased could not be ascertained. The Autopsy Surgeon, found following ante-mortem injuries on the body of the deceased:-

"i Postmortem burn out all body except back of left foot.

7. After aforementioned F.I.R. was registered, Investigating Officer proceeded with statutory investigation of aforesaid case crime number in terms of Chapter XII Cr.P.C. During course of investigation, Investigating Officer examined first informant and other witnesses namely Sripal, Arun, Sanju, Mahesh, Raju, Sanjay Pradhan, Vikash, Akram @ Tulli, Gaurav, Chitranjan, Parsuram, Dr. Vinod Kumar Mishra. under Section 161 Cr.P.C. Complicity of present applicant in the crime in question surfaced in the statement of Arun. This witness in his statement has stated that deceased was last seen along with two others in the company of named accused including Ankit. The other incriminating

circumstance that has emerged against applicant is in the statement of Sanju Tanwar who has stated that the deceased had given him a call on his mobile phone and disclosed that he was being assaulted by named accused. Apart from above, there is extra judicial confession of the parents of the named accused before Mahesh Rajkumar and Sanjay wherein they are alleged to have admitted the guilt of named accused. 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 present applicant is also established in the crime in question. Accordingly, Investigation Officer submitted the charge sheet dated 19.07.2023 whereby named accused namely Ankit, Ashish, Sumit @ Bhola, Shiva Malik and Ritesh have been charge sheeted under Sections 302, 201, 34 I.P.C. whereas investigation in respect of one accused namely Altmas is said to be pending.

8. Mr. Gaurav Kakkar, the learned counsel for applicant submits that though the applicant is a named/charge-sheeted accused yet he is liable to be enlarged on bail. As per prosecution story as unfolded in the F.I.R. he submits that present case is a case of circumstantial evidence. As such, 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 Apex Court in **Sharad Birdhi Chand Sarda vs State Of Maharashtra reported AIR 1984 SC 1622**. However, upto this stage, none of the parameters laid down in aforesaid judgement are satisfied against present applicant..

9. It is then contended that complicity of the applicant in the crime in question is alleged in view of the following three incriminating circumstances:

i. Statement of witness Arun.

ii, Statement of Sanju Tanwar.

iii. Confessional statement of the parents of accused before three persons namely Mahesh, Raj and Sanjay..

10. According to the learned counsel for applicant none of the incriminating circumstance referred to above either singularity or collectively are sufficient enough to infer the guilt of applicant in the crime in question. Discrediting the statement of witness Arun, learned counsel for applicant submits that the theory of last seen has emerged against applicant in the statement of aforesaid witnesses. However, no conviction of an accused can be maintained only on the ground of last seen. In support of above, he has relied upon the judgements of Apex Court in **Jabir Vs. State of Uttrakhand 2023 SCC OnLine SC32** and in **Jaswant Gir Vs. State of Punjab (2005) 12 SCC 438**.

11. With regard to the statement of witnesses Sanjay Tanwar, the learned counsel for applicant submits that there is nothing on record to establish that the deceased before his death had made confession to this witness alleging therein that he was being assaulted by the named accused and other persons. No attempt was made by Investigating Officer to collect the C.D.R. of deceased and the witness Sanjay Tanwar.

12. In respect of extra judicial confession made by the parents of the deceased before three person i.e. Mahesh, Rajkumar and Sanjay, learned counsel for applicant submits that same does not fall in the realm of credible evidence. As such, same is liable to be ignored. On the above premise, he submits that applicant is liable to be enlarged on bail.

13. Even otherwise applicant is a man of clean antecedents

inasmuch he has no criminal history to his credit except the present one. Applicant is in custody since 18.06.2023. As such, he has under-gone more than four and a half months of incarceration. The police report (charge-sheet) 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 crystallised. 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 the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

14. Per contra, the learned A.G.A. for State and the learned counsel for first informant have vehemently opposed the prayer for bail. They submit that since applicant is a named and charge-sheeted accused therefore he does not deserve any indulgence by this Court. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

15. Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant coupled with the fact that 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 judged in the light of parameters laid down by Apex Court in **Sharad Birdhi Chand Sarda (supra)**, up to this stage, none of the parameters laid down by Apex Court in aforementioned judgement are satisfied against

applicant, no strong motive has emerged against applicant for committing the crime in question, no recovery has been made against applicant, as per the material on record, no animus can be gathered against applicant to commit the crime in question, upto this stage the three incriminating circumstance have emerged against applicant as detailed above are by themselves insufficient to infer the guilt of present applicant, police report (charge-sheet) under 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 crystalized, yet in spite of above, the learned A.G.A. and the learned counsel for first informant could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the course of trial, the judgment of Apex Court in **Sumit Subhash Chandra Gangawal and another Vs. State of Maharashtra and another 2023 Live Law SC 373**, the period of incarceration undergone by applicant, the clean antecedents of applicant, therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition of the present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

16. Accordingly, present application for bail is **allowed**.

17. Let the applicant- **Ankit** involved in aforesaid case crime number 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 which are being imposed in the interest of justice:-

(i) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner

whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

18. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison

Order Date :- 8.11.2023

YK