

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40392 of 2023

Applicant :- Asif Bangali

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Naushad Siddiqui, Bipin Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Mohd. Naushad Siddiqui, 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-Asif Bangali, seeking his enlargement on bail in Case Crime No. 193 of 2019, under Sections 394, 411, 302/34 IPC, Police Station-Kakrauli, District-Muzaffar Nagar during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 20.07.2019, a prompt FIR dated 20.07.2019 was lodged by first informant-Isha (brother of the deceased) and was registered as Case Crime No. 193 of 2019, under Section 302 IPC, Police Station-Kakrauli, District-Muzaffar Nagar. In the aforesaid FIR, an unknown person has been arraigned as solitary accused.

5. The gravamen of the allegations made in the FIR to the effect that as per the disclosure made by the injured (Moosa), he was assaulted by 3 to 4 unknown persons. Thereafter, the injured was taken to the hospital for medical treatment. Ultimately, he succumbed to the injury sustained by him.

6. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The inquest (Panchayatnama) of the body of deceased was conducted on 20.07.2019. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was said to be homicidal and the cause of death was said to be gun shot injury and excessive bleeding. Thereafter, the post mortem of the body of deceased was conducted. The Autopsy Surgeon, who conducted

autopsy of the body of deceased, opined that the cause of death of the deceased is shock and hemorrhage as a result of ante-mortem fire arm injuries. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

" 1. Fire entry wound back of Lt. side chest just lateral to mid line, margins lacerated edge inverted size 2 x 2 cm 18 cm below from c7.

2. One plastic wadew pinna 28 multiple palits regarding from Lt. lung sealed and handed over to police constable."

7. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. Applicant was arrested on 21.07.2019 by the police of Police Station-Nai Mandi, District Muzaffar Nagar in connected with another case crime number. Subsequently, the statement of 2 other witnesses namely - (1) Anis and (2) Mohd. Ibrahim were recorded under Section 161 Cr.P.C. The aforesaid witnesses in their statement before the Investigating Officer have stated that 4 persons namely (1) Salman, (2) Furkan, (3) Faizan and (4) Asif Bangali (applicant herein) were standing below the culvert and talking to each other. On the basis of above, Investigating Officer arrested Salman, Furkan and Faizan on 01.08.2019. Thereafter, the statements of aforesaid accused were recorded, wherein the complicity of present applicant also surfaced in the crime in question. Subsequently, the confessional statement of Salman and Furkan was recorded. Co-accused Salaman in his confessional statement has stated that the role of causing gun shot injury upon the deceased is assigned to himself whereas the other 3 accused i.e. Furkan, Faizan and Asif Bangali were catching hold the deceased. On the basis of above and other material collected by Investigating Officer during course of investigation, he, ultimately, came to the conclusion that complicity of aforementioned accused is established in the crime in question. Accordingly, he submitted the charge sheet dated 28.09.2019 whereby all the aforementioned accused including the applicant have been charge sheeted under Sections 394, 411, 302/34 IPC.

8. Learned counsel for applicant contends that applicant is not named in the FIR. Though, the applicant is a charge sheeted accused yet he is liable to be enlarged on bail. Present case is a case of circumstantial evidence and therefore, there is no eye witness of the occurrence in question. The complicity of an accused in a case based on circumstantial evidence has to be inferred in accordance with the parameters laid down by the Apex

Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622 (Paragraph 152)**. However, up to this stage, none of the parameters laid down in aforementioned judgment are satisfied against applicant. The complicity of the applicant in the crime in question has emerged in the statements of co-accused Salman, Furkan and Faizan, wherein it has been stated that the present applicant was also involved in the crime in question. Subsequently, the confessional statement of co-accused Salman was recorded, wherein he has assigned the role of causing the fatal gun shot injury upon the deceased to himself and the role of catching hold has been assigned to other accused. Except for above, no other incriminating circumstance has emerged against applicant in the crime in question.

9. According to the learned counsel for applicant, it is thus apparent that the case of co-accused Salman is clearly distinguishable from other co-accused i.e. Furkan, Faizan and Asif Bangali (i.e. applicant herein). According to the learned counsel for applicant, similarly situate and circumstanced co-accused Salman has already been enlarged on bail vide order dated 04.01.2021 passed in Criminal Misc. Bail Application No. 44206 of 2020 (Salman Vs. State of U.P.), which reads as under:-

"Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

This bail application has been given by the accused applicant Salman in Case Crime No. 193 of 2019, under Sections 302, 394, 411, 34 I.P.C., P.S.-Kakrauli, District Muzaffar Nagar.

Learned counsel for the applicant has submitted that whole case is based on circumstantial evidence and there is no eye witness of the incident. So far as criminal history is concerned, learned counsel has submitted that one case is connected with this particular case whereas other cases have been registered subsequently. It has also been submitted that F.I.R. was registered against unknown persons and name of the accused applicant came in the light only on the basis of statement of witness Anis, who disclosed that the applicant was standing at the place where incident is alleged to have taken place. Further submission is that charge-sheet has already been filed after police investigation and applicant is prepared to furnish sureties and bonds, therefore, there is no possibility of his either fleeing away from the judicial process or tampering with the evidence. Applicant is languishing in jail since 1.8.2019 and undertakes that he will not misuse the liberty of bail, if granted and cooperate in trial.

Learned A.G.A. has vehemently opposed the prayer of bail. However, he has not disputed the aforesaid facts and has submitted that the police has filed charge-sheet after concluding the investigation.

Having heard the submission of learned counsel of both sides, considering the fact of the case and without commenting on the merits of the case, I find it to be a fit case for bail.

Let applicant Salman be released on bail in Case Crime No. Case Crime No. 193 of 2019, under Sections 302, 394, 411, 34 I.P.C., P.S.- Kakrauli, District Muzaffar Nagar, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/court concerned, subject to following conditions:-

(i) The applicant will co-operate with the trial and remain present personally on each and every date fixed for framing of charge, recording of evidence as well as recording of statement under Section 313 Cr.P.C. or through counsel on other dates and in case of absence without sufficient cause, it will be deemed that he is abusing the liberty of bail enabling the court concerned to take necessary action in accordance with the provisions of Section 82 Cr.P.C. or Sections 174A and 229A I.P.C.

(ii) The applicant will not tamper with the prosecution evidence and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant will not indulge in any unlawful activities.

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 and send the applicant to prison."

10. Another similarly situate and circumstanced co-accused Furkan has also been enlarged on bail vide order dated 17.11.2021 passed in Criminal Misc. Bail Application No. 37531 of 2021 (Furkan Vs. State of U.P.). For ready reference, the same is reproduced herein under:-

"Heard learned counsel for the applicant as well as learned A.G.A for the State and perused the record.

By means of this application, the applicant who is involved in case crime no.193 of 2019, under Section 302, 394, 411, 34 IPC, Police Station-Kakrauli, District-Muzaffar Nagar is seeking enlargement on bail during the trial.

Submission made by learned counsel for the applicant is that the FIR do not contain the name of any accused persons and the FIR was registered under section 302 IPC on 20.07.2019. During the course of investigation, complicity of the applicant and one Salman has figured up in the commission of the offence. It is next contended that co-accused Salman has been granted bail by co-ordinate Bench of this Court on 04.01.2021 in Criminal Misc Bail Application No.44206 of 2020 and the case of the applicant stands on identical footing qua the abovesaid co-accused person. The applicant is languishing in jail since 01.08.2019.

Learned A.G.A opposed the prayer for bail but could not dispute the aforesaid facts and the legal submissions as argued by the learned counsel for the applicant.

Keeping in view the nature of the offence, evidence, complicity of the accused and submissions of learned counsel for the parties and applying the principal of parity, I am of the view that the applicant has made out a case for bail.

Let the applicant, Furkan, who is involved in the aforesaid case 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.

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE 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 COUNSEL. IN CASE OF HIS ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS 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, 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 HIM 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.

In case of breach of any of the above conditions, it shall be a ground for

cancellation of bail.

It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Since the bail application has been decided under extra-ordinary circumstances, thus in the interest of justice following additional conditions are being imposed just to facilitate the applicant to be released on bail forthwith. Needless to mention that these additional conditions are imposed to cope with emergent condition-:

1. The applicant shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.

2. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

3. The computer generated copy of such order shall be self attested by the counsel of the party concerned.

4. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing."

11. On the above premise, the learned counsel for applicant submits that the case of present applicant is similar and identical to aforementioned charge sheeted co-accused who have already been enlarged on bail. There is no such distinguishing feature on the basis of which, the case of present applicant could be so distinguished from aforementioned charge sheeted but bailed out co-accused so as to deny him bail. He, therefore, contends that in view of above and for the facts and reasons recorded in the bail orders of aforementioned co-accused, applicant is also liable to be enlarged on bail on the ground of parity.

12. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. However, the learned A.G.A. submits that applicant has criminal history of 3 cases (A) Under the Gangster Act, (B) Under Section 3/25 Arms Act and (C) Section 414 IPC.

13. When confronted with above, the learned counsel for applicant contends that the aforementioned criminal cases registered against the applicant are subsequent to the FIR giving rise to present application for bail. Even otherwise, the criminal antecedents of applicant do not relate to a serious or heinous offence, therefore,

the rigours of law laid down by the Apex Court in the case of **Neeru Yadav Vs. State of U.P. (2014) 16 SCC 508** are not attracted in the present case. Applicant is in jail since 05.08.2019. As such, he has undergone more than 4 years of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted on 28.09.2019, upon which, cognizance was taken by the concerned Magistrate and thereafter, the case was committed to the court of Sessions. Resultantly, Sessions Trial No. 1160 of 2019 (State Vs. Salman and Others) came to be registered and is now said to be pending in the Court of Additional District Judge, Court No. 12, Muzaffar Nagar. However, up to this stage, only one prosecution witness of fact i.e. PW-1 Isha has been examined. He, therefore, submits that the trial is moving at a snail's pace. Referring to the judgment of the Supreme Court in **A.R. Antulay Vs. R.S. Nayak, 1992 (1) SCC 225**, he submits that right to speedy trial is a fundamental right of an accused. Since the applicant is in jail, therefore, he cannot be said to be responsible for the delay in conclusion of the trial. Since 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. However, up to this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of the 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. has opposed the prayer for bail. 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.

15. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that similarly situate and circumstanced co-accused have already been enlarged on bail, the learned A.G.A. could not point out any such distinguishing feature on the basis of which, the case of present applicant could be so distinguished from named/charge sheeted but bailed out co-accused so as to deny bail to the present applicant, the aforementioned criminal cases registered against the applicant are subsequent to the FIR giving rise to present application for bail, even otherwise, the criminal antecedents of applicant do not relate to serious or heinous

offence, apart from above, the Court finds that after submission of charge sheet, cognizance was taken upon same, and the case was committed to the Court of Sessions as offence complained of is exclusively triable of Sessions, resultantly, Sessions Trial No. 1160 of 2019 (State Vs. Salman and Others) came to be registered and is now said to be pending in the Court of Additional District Judge, Court No. 12, Muzaffar Nagar, however, up to this stage, only one prosecution witness of fact i.e. PW-1 Isha has been examined, the trial is moving at a snail's pace, an accused also has fundamental right of speedy trial vide judgment of the Supreme Court in **A.R. Antulay** (Supra), since the applicant is in jail, therefore, he cannot be said to be responsible for the delay in conclusion of the trial, 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. 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 comments on the merits of the case, applicant has made out a case for bail.

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

17. Let the **applicant-Asif Bangali**, be released on bail in the 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.

18. 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 :- 18.10.2023

Vinay