

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41148 of 2023

Applicant :- Lallu Nat

Opposite Party :- State of U.P.

Counsel for Applicant :- Zafar Abbas

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ansar Haider Rizvi alongwith Mr. Zafar Abbas, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This repeat application for bail has been filed by applicant **Lallu Nat** seeking his enlargement on bail in Case Crime No. 158 of 2018, under Sections 460, 380, 411 I.P.C., Police Station Naraini, District Banda during the pendency of trial.

4. The first bail application of applicant was rejected vide order dated 29.11.2019 passed by this Court in Criminal Misc. Bail Application No. 31211 of 2019 (Lallu Nut vs. State of U.P.) For ready reference, the same is extracted hereinunder:-

"Counter affidavit and supplementary affidavit filed today, are taken on record.

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

This instant bail application has been filed on behalf of the applicant Lallu Nat son of Hariva with a prayer to release him on bail in Case Crime No.158 of 2018 under Sections 460, 380, 411 IPC, Police Station-Naraini, District-Banda during pendency of the trial.

The contention of the learned counsel for the applicant is that the F.I.R. has been lodged by the informant against unknown person. The applicant has been falsely implicated in this case. It is further submitted that name of the applicant has come forward in the statement of co-accused Lallu Nat son of Rajbali during investigation. Recovery of one country made pistol 315 bore and 3 live cartridges and Rs. 2120/- has been shown on the pointing out of the applicant after one month, which has been planted.

Applicant is having a criminal history of eight cases, in which in one case

final report has been submitted, whereas in five cases, he has already been released on bail, one case crime is related to Arms Act and the present case crime No.158 of 2018 is pending against the applicant, which has been properly explained in para No.3 of the supplementary affidavit. It has lastly been submitted that co-accused persons, namely, Chiraunji Lal Nat and Lallu Nat son of Raj Bali have already been enlarged on bail by order dated 09.07.2019 passed by the Co-ordinate Bench of this Court in Crl. Misc. Bail Application No.27171 of 2019 and by order dated 04.07.2019 passed by Co-ordinate Bench of this Court in Crl. Misc. Bail Application No.26469 of 2019 and the case of the applicant stands on the same footing. The applicant is languishing in jail since 30.09.2018. In case, he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

Per contra, learned AGA opposed the prayer for bail by submitting that the recovery of one country made pistol 315 bore, two live cartridges and Rs.2120/- was made on the pointing out of the applicant, which was looted by him in the incident. The applicant could not produce an arms licence when demanded. It is further submitted that though the applicant has been released in aforesaid criminal cases and one present case is pending, but it is not clear from this fact that he is not involved in the present case. Learned A.G.A. further submitted that the applicant's case stands on a different footing from the other co-accused Lallu Nat, son of Rajbali and Chiraunji Lal Nat, who have been granted bail by this Court as nothing incriminating was recovered from them and therefore, there is no parity between the applicant and other co-accused, who have been granted bail by this Court.

The recovery memo has been filed as Annexure 7 to the accompanying affidavit and perusal of the same will show that one country made pistol 315 bore and two live cartridges among other things were recovered from the applicant whereas prima facie it is seen that only some money was recovered from the other co-accused who have been granted bail by this Court as will also be clear from their bail orders. Therefore, in my opinion the case of the applicant stands on a different footing from the other co-accused, who have been granted bail by this court and the applicant is therefore, not entitled to parity in the matter of bail with the other co-accused.

Having considered the rival submissions of learned counsel for the parties, facts and circumstances of the case, prima facie, no case is made out for grant of bail.

The bail application is accordingly, rejected. "

5. The second bail application of applicant was rejected vide order dated 08.10.2020 passed by this Court in Criminal Misc. Bail Application No. 9535 of 2020(Lallu Nut vs. State of U.P.) For ready reference, the same is extracted hereinunder:-

"This is second bail application.

Case called out. No one appears on behalf of the applicant to press this

application.

The second bail application is accordingly rejected for want of prosecution."

6. Learned counsel for applicant submits that bail was denied to the applicant primarily on the ground that recovery of country made pistol of 315 bore and 3 live cartridges and Rs. 2120/- cash was made on the pointing of application. Attention of the court at this stage was invited to the post-mortem report of the deceased and on basis thereof, learned counsel for applicant contends that in the opinion of the autopsy surgeon the cause of death of the deceased is coma as a result of ante-mortem injury. The autopsy surgeon found the following ante-mortem injuries on the body of the deceased.

1. Multiple stitch wound present on area top of head left side head and upper border left ear.

2. Contusion 7 cm x 6 cm present on left side of head just above left ear.

3. Contusion 6cm x 5cm present on top of head assured the injury No.1 on opening.. lacerations present under scalp all above mentioned injuries liver laceration of the left parietal bone subdural haemorrhage Present All over brain.

7. In the submission of the learned counsel for applicant none of the injuries sustained by the deceased is a gun shot injury. He, therefore, submits that the recovery of country made pistol of 315 bore shall not be fatal to the case of the applicant. So far as the recovery of Rs. 2120/- cash on the pointing of applicant is concerned the same is yet to be proved in the trial.

8. On the above premise, the learned counsel for applicant submits that upto this stage, there is nothing on record to establish the complicity of the applicant in the death of deceased. No such incriminating circumstance has emerged so as to prolong the custodial arrest of applicant either. Similarly situated and circumstanced three other co-accused have already been enlarged on bail.

9. It is then contended that the charge sheet has been filed against the applicant on 18.12.2018 and in spite of fact that the period of more than 4 years and 10 months has rolled by the trial of the applicant has not yet concluded. Though the applicant has criminal history of 10 cases but the same has been sufficiently explained.

The applicant is in jail since 30.09.2018. As such he has undergone more than 5 years 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 stands crystallized. 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 cooperate with the trial.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a charge sheeted accused, therefore, he does not deserve any indulgence by this Court. 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 only incriminating circumstance that has emerged against applicant is recovery of country made pistol of 315 bore alongwith two live cartridges and sum of Rs. 2120/- cash, as per the medical opinion the cause of death of the deceased is ante-mortem head injury, the autopsy surgeon who conducted the autopsy on the body of the deceased has not opined that the injury sustained by the deceased are gun shot injuries, therefore, the recovery of country made weapon is by itself not so sufficient an incriminating circumstance so as to infer the guilt of the applicant in crime in question, the recovery of Rs. 2120/- cash shall be subject to trial evidence, the explained criminal history of applicant, the three judges Bench judgment of the Supreme Court in the case of **Brijmani Devi Vs. Pappu Kumar and Another (2022) 4 SCC 497**, the period of incarceration undergone inspite of the fact that 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 stands crystallized yet inspite of above, 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, the judgment of Supreme Court in **Sumit Subhaschandra Gangwal & Anr. Vs. The State of Maharastra & Anr. 2023 Live Law (SC) 373 (paragraph 5)**, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to this 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-**Lallu Nat**, 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/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 :- 30.10.2023

Imtiyaz