

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40666 of 2023

Applicant :- Chhanga@ Jagpal

Opposite Party :- State of U.P.

Counsel for Applicant :- Saqib Meezan, S.P.S. Chauhan, Salman Ahmad

Counsel for Opposite Party :- G.A., Rajiv Kumar Pandey

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37745 of 2023

Applicant :- Neera @ Neeraj

Opposite Party :- State of U.P.

Counsel for Applicant :- S.P.S. Chauhan, Smt. Meenakshi Chauhan

Counsel for Opposite Party :- G.A., Rajiv Kumar Pandey

Hon'ble Rajeev Misra, J.

1. Heard Mr. S.P.S. Chauhan, the learned counsel for applicant, the learned A.G.A. for State and Mr. Rajiv Kumar Pandey, the learned counsel representing first informant.

2. Perused the record.

3. These applications for bail have been filed by applicants-Chhanga @ Jagpal and Neera @ Neeraj, seeking their enlargement on bail in Case Crime No. 101 of 2023, under Sections 147, 323, 302 IPC, Police Station-Chandaus, District-Aligarh during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 26.04.2023, a delayed FIR dated 27.04.2023 was lodged by first informant-Pradeep and was registered as Case Crime No. 101 of 2023, under Sections 147, 323, 302 IPC, Police Station-Chandaus, District-Aligarh. In the aforesaid FIR, 6 persons namely (1) Neera, (2) Tanu, (3) Raju, (4) Teekaram, (5) Chhanga and (6) Other Sons of Raju have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused armed with Lathi and Danda assaulted the uncle of the first informant namely - Kalua on account of which, he sustained injuries. The injured was admitted to the hospital. However, he ultimately, succumbed to the injuries 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 27.04.2023. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as homicidal and the cause of death of deceased was said to be injuries sustained by him in the scuffle, which took place. 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 hemorrhage and shock as a result of ante-mortem injuries. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. A lacerated wound measured about 5.0 cm x 1.5 cm & bone deep present over parietal-occipital Lt. side of Head 15.0 cm above Lt. eye brow with underlying bone # fracture.

2. A lacerated wound measured about 1.0 cm x 0.5 cm & skin deep present over Lt. frontal region of head. 6.0 cm above Lt. eye brow.

3. A lacerated wound measured about 1.0 cm x 0.5 cm & skin deep present over Lt. side forehead, 0.5 cm above Lt. eye brow.

4. An abrasion measured about 4.0 cm x 1.0 cm present over Lt. side upper face, 3.0 cm below lower eye lid.

5. A contusion present over Rt. side abdomen measured about 3.0 cm x 2.0 cm, 5.0 cm above umbilical region."

7. During course of investigation, Investigating Officer examined first informant-Pradeep and following witnesses namely - (1) Soni Devi @ Sonu and (2) Khusboo Kumari under Section 161 Cr.P.C. However, out of the aforesaid witnesses so examined, 2 of the witnesses namely (1) Soni Devi @ Sonu (widow of the deceased) and (2) Khusboo Kumari (daughter of the deceased) are said to be the eye witnesses of the occurrence. The said witnesses have also

supported the FIR. Investigating Officer thereafter arrested the named accused. On the pointing of accused-applicant Neera @ Neeraj, the Danda which was used in the commission of crime was also recovered. The said Danda had blood stains. Accordingly, the same was sent for chemical examination to the F.S.L. Laboratory. According to the learned counsel for applicant, as per the F.S.L. report, since the blood found on the recovered weapon of assault was disintegrated, therefore, it could not be concluded as to what is the origin of the blood stains. The confessional statements of the accused were also recorded wherein, the role of causing fatal head injury upon the deceased has been assigned to applicant-Neera @ Neeraj. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of 4 of the named accused namely (1) Chhanga @ Jagpal, (2) Neera @ Neeraj, (3) Raju and (4) Tannu @ Sanjay is established in the crime in question. He, accordingly, submitted the charge sheet dated 20.07.2023 whereas, the other named accused have been exculpated.

8. At the very outset, Mr. S.P.S. Chauhan, the learned counsel for applicant submits that 2 of the named/charge sheeted accused namely (1) Raju and (2) Tannu @ Sanjay have already been enlarged on bail by this Court. The details of the same are as under:-

(i). Criminal Misc. Bail Application No. 37272 of 2023 (Raju Vs. State of U.P.) decided on 24.08.2023:-

"1. List revised.

2. Heard Sri S.P.S. Chauhan, learned counsel for the applicant, Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Raju, seeking enlargement on bail during trial in connection with Case Crime No.101 of 2023, under Sections 147, 323, 302 IPC, registered at Police Station Chandaus, District Aligarh.

4. The FIR of the present case was lodged on 27.4.2023 by Pradeep against the applicant, Neera, Tannu, Teeka Ram, Changa and other boys of Raju alleging therein that on 26.4.2023 at about 10.30 p.m., they were sitting outside their house where Arun, his cousin told him that Neera had slapped him due to some dispute of grazing of goats after which he abused him. Later on the accused persons armed with lathi-danda came to their house and assaulted them due to which his uncle Kalua received injury and fell down. He was assaulted on his head. He was taken to hospital where looking to his serious condition, he was referred to Aligarh where doctor

declared him dead.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that common and general role has been assigned to five named including the applicant and some unknown persons. It is argued that although the deceased Kalua was found to have received five injuries on his person but injury no.1 was over the parieto-occipital left side of head having fracture on the underlying bone and injury no.5 although wrongly numbered as injury no.6 in the postmortem report was the contusion on the right side of abdomen above umbilical region which must probably has peritoneum and the liver was lacerated and the said two injuries were the collectively cause of death which was opined as hemorrhage and shock as a result of ante-mortem injuries. The other three injuries were lacerated wound over the left parietal region of head, another lacerated wound which was also on the left side which both were skin deep and an abrasion over the left side of upper face which could not have contributed to the death. The author of the said fatal injuries is not known. Beneath the injury no.1 having fracture, the membranes were found lacerated and brain was found to have clotted in blood. It is argued that common, general and omnibus allegations have been levelled against the accused persons including the applicant in the FIR. It is argued that co-accused Tannu @ Sanjay has been granted bail vide order dated 8.8.2023 passed by coordinate Bench of this Court in Criminal Misc. Bail Application No.34788 of 2023, copy of the same produced by learned counsel for the applicant is taken on record. It has also been pointed out that the applicant is not having any criminal history as stated in para 27 of the affidavit. The applicant is in jail since 27.4.2023.

6. Per contra learned counsel for the State opposed the prayer for bail.

7. After hearing the counsel for the parties and perusing the record, it is evident that common and general role has been assigned to the accused persons including applicant. Two injuries on the body of the deceased could have been proved fatal. The author of the said injuries is not known.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant-Raju, be released on bail in the aforesaid case crime number on 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The 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) 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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 I.P.C.

(v) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. 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.

11. The bail application is allowed."

(ii). Criminal Misc. Bail Application No. 34788 of 2023 (Tannu @ Sanjay Vs. State of U.P.) decided on 08.08.2023:-

"1. Heard Sri S.P.S. Chauhan, learned counsel for the applicant and Sri Ravi Kant Kushwaha, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 101 of 2023, under Sections 147, 323, 302 IPC, Police Station- Chandaus, District- Aligarh, during pendency of the trial in the court below.

3. FIR of the present case was lodged against the applicant, four others and sons of co-accused Raju and according to the FIR, on 26.04.2023 at about 10:30 p.m. applicant along with other accused persons made assault in-front of the house of the informant and due to assault made by them uncle of the informant sustained serious injuries and subsequently doctor declared him dead.

4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and applicant never participated in the incident and on the basis of general and omnibus allegation, he has been roped in the present matter along with other accused persons.

5. He further submitted that incident is said to have taken place at about 10:30 p.m. in the night but no source of light has been mentioned either in the FIR or in the statements of the witnesses. He further submitted that although, as per the FIR, place of incident was in-front of the house of the informant but when the statement of one injured Soni was recorded during investigation then she stated that when her husband was going toward the house of the applicant for making complaint then on the way applicant and other accused persons made assault and therefore, she changed the place of incident and this clearly suggests that due to previous enmity applicant and other accused persons have been roped in the present matter.

6. He further submitted that although, as per the allegation more than six persons made assault but according to the post-mortem report, deceased sustained three lacerated wounds, one abrasion and contusion and however, all three lacerated wounds were on fore head but two lacerated wounds were of skin deep, therefore, it appears that he died due to injury no. 1 and there is no evidence on record, which can show that applicant is the author of this injury.

7. He further submitted that applicant is not having any criminal history and he is in jail since 05.05.2023.

8. Per contra, learned AGA opposed the prayer for bail and submitted that applicant along with other accused persons made assault upon the deceased and he was sharing with common object and intention along with other accused persons and post-mortem report suggests that deceased sustained five injuries, therefore, considering the nature of allegation and injury sustained by the deceased, applicant does not deserve bail.

9. I have heard both the parties and perused the record of the case.

10. Although, as per the allegation, applicant along with other accused persons made assault and due to assault made by them, uncle of the informant died and one Soni sustained injuries but incident is said to have taken place at about 10:30 p.m. in the night and no source of light has been mentioned either in the FIR or in the statement of the prosecution witnesses.

11. Further, according to the FIR, incident was occurred in front of the house of the informant but as per the statement of Soni, the alleged injured of the case, incident was occurred on the way while her husband was going towards the house of the applicant side for making complaint and therefore, I find force in the argument advanced by learned counsel for the applicant that there is contradiction with regard to the place of incident in the FIR and in the statement of the injured Soni.

12. Further, from the record, it reflects that applicant has been made accused in the present matter on the basis of general and omnibus allegation and he is not having any criminal history.

13. Therefore, considering the facts and circumstances of the case discussed above, in my view applicant is entitled to be released on bail.

14. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

15. Let the applicant- Tannu @ Sanjay be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

16. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

17. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial"

9. On the above premise, he, submits that the case of present applicants is similar and identical to aforementioned named/charge sheeted co-accused Raju and Tannu @ Sanjay, who have already been enlarged on bail. There is no such distinguishing feature on the basis of which, the case of present applicants could be so distinguished from aforementioned co-accused so as to deny them bail. He, therefore, submits that in view of above and for the facts and reasons recorded in the bail orders of aforementioned co-accused, applicants are also liable to be enlarged on bail on the ground of parity.

10. It is next contended that from the perusal of the FIR, it is apparent that general role has been assigned to all the named/charge sheeted co-accused. The author of fatal head injury sustained by the deceased i.e. lacerated wounds on his forehead etc. has not been specified. He, therefore, contends that since the author of aforesaid fatal injuries sustained by deceased has not been specified, therefore, the case of present applicants cannot be distinguished from each other.

11. Even otherwise, applicants are men of clean antecedents having no criminal history to their credit except the present one.

Applicant-Chhanga @ Jagpal is in jail since 27.04.2023 and applicant-Neera @ Neeraj is in jail since 06.05.2023. As such, they have undergone substantial period 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 applicants stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. On the above premise, he submits 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.

12. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that apart from the deceased, one another person namely Soni Devi @ Sonu (widow of the deceased) also sustained injuries which is explicit from her injury report, which is on record as Annexure-4 to the affidavit filed in support of the present application for bail of applicant-Chhanga @ Jagpal. Attention of Court was then invited to the confessional statement of the charge sheeted co-accused wherein, the role of causing fatal assault i.e. head injuries on the body of deceased has been assigned to named accused Neera @ Neeraj. Learned A.G.A. and the learned counsel representing first informant have then referred to the statement of Soni Devi @ Sonu (widow of the deceased) and Khushbu Kumari (daughter of the deceased). With reference to above, the learned A.G.A. and the learned counsel representing first informant submit that the role of committing assault upon Khushbu Kumari is established as per the statement of Soni Devi @ Sonu. However, the learned A.G.A. fairly submits that the victim Khushbu Kumari has not been examined. On the above premise, the learned A.G.A. contends that the case of applicant-Neera @ Neeraj is clearly distinguishable from other charge sheeted co-accused. It is further submitted that since criminality committed by the named/charge sheeted co-accused is joint and common, therefore, the same is incapable of separation or segregation. As such, no exception can be carved out in the case of present applicants. They, therefore, contend that no sympathy be shown by this Court in favour of applicants. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

13. Having heard, the learned counsel for applicants, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence,

accusations made, complicity of accused and coupled with the fact that the role of causing injuries upon the deceased has been assigned to all the named/charge sheeted accused, none of the witnesses, examined under Section 161 Cr.P.C., has specified the author of the fatal lacerated wounds sustained by the deceased, the only distinction that has emerged in the case of applicant-Neera @ Neeraj that he is the author of fatal lacerated wounds sustained by the deceased, the said differentiation has appeared in the confessional statement of other co-accused and not any of the witnesses examined on behalf of the prosecution under Section 161 Cr.P.C., the confessional statement of an accused is inadmissible in evidence, 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 applicants 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 applicants during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the present application for bail, but without making any comments on the merits of the case, applicants have made out a case for bail.

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

15. Let the **applicants-Chhanga @ Jagpal and Neera @ Neeraj**, be released on bail in the aforesaid case crime number on their 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.

16. 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 condition mentioned above.

Order Date :- 7.11.2023

Vinay