

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42091 of 2023

Applicant :- Neeraj Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajendra Prasad Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Amit Kumar, Advocate, holding brief of Mr. Rajendra Prasad Shukla,, 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-**Neeraj Kumar** seeking his enlargement on bail in Case Crime No.139 of 2023, under Section 302 I.P.C. Police Station- Pipari, District-Kaushambi during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 09.05.2023, a prompt F.I.R. dated 09.05.2023 was lodged by first informant/applicant Neeraj Kumar and was registered as Case Crime No.139 of 2023, under Section 302 I.P.C. Police Station- Pipari, District- Kaushambi. In the aforesaid F.I.R. three persons namely Harilal and Osma have been nominated as named accused, whereas certain unknown persons have also arraigned as an accused.

5. 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. However, as per suspicion expressed against applicant in the commission of crime in question as per whispers of villagers, the Investigating Officer arrested applicant on 15.05.2023. On the pointing of the applicant, the recovery of sharp edged weapon (Chapad) is alleged to have been made. The same is manifest from the document occurring at page 34 of the paper book. On the basis of above and the statement of the witnesses so examined by the Investigating Officer he came to the conclusion that the complicity of applicant is established in the crime in question. Accordingly, Investigating Officer submitted the

charge sheet against applicant Neeraj and Osma on 18.06.2023, whereby applicant who is the informant and other co-accused have been charge sheeted under Section 302 I.P.C, the named accused was exculpated.

6. Learned counsel for applicant submits that present case is a case of circumstantial evidence, therefore, there is no eye witness of the occurrence. According to the learned counsel for applicant, the complicity of an accused in a case based upon 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, upto this stage, none of the parameters laid down by the Apex Court in aforementioned judgment are satisfied against applicant. The complicity of applicant in the crime in question is said to be inferred as per the statements of Rakesh Saroj, Amar Singh and Hubalal Saroj. However, as per the statement of the aforesaid witnesses not even the theory of last seen can be pressed against applicant. The aforesaid eye-witnesses are not even the witnesses of the crime in question. On the above premise, learned counsel for applicant contends that applicant has been implicated in the crime in question simply on the basis of suspicion. In the submission of the learned counsel for applicant suspicion whatsoever strong cannot place. The medical evidence does not corroborate the recovery of the weapon of assault take the place of proof which is alleged to have been made on the pointing of the applicant. He, therefore, contends that applicant has been falsely implicated in the crime in question. As such, he is liable to be enlarged on bail.

7. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 15.05.2023. As such, he has undergone more than 5 months 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 applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. It is thus urged 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.

8. Per contra, the learned A.G.A. for State has opposed the prayer for bail. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

9. 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 and complicity of accused coupled with the fact that the complicity of applicant in the crime in question sought to be established as per the statements of Rakesh Saroj, Amar Singh and Hubalal Saroj, however, as per the statement of the aforesaid witnesses not even the theory of last seen can be pressed against applicant, the aforesaid witnesses are not even an eye witness of the occurrence, prima facie the applicant has been implicated in the crime in question on the basis of suspicion, the medical evidence does not corroborate the recovery made on the pointing of applicant, the charge sheet has been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet inspite 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, the clean antecedents of applicant, the period of incarceration undergone, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comment on the merits of the case, applicant has made out a case for bail.

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

11. Let the applicant- **Neeraj Kumar** 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.

12. 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 :- 3.11.2023

Imtiyaz