

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41224 of 2023

Applicant :- Ajeet Yadav Alias Ramvakeel

Opposite Party :- State of U.P.

Counsel for Applicant :- Bharat Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Bharat Singh, 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 Ajeet Yadav @ Ramvakeel seeking his enlargement on bail in Case Crime No. 128 of 2023, under section 302/34 IPC, P.S. Mujaria, District Badaun, during the pendency of trial.

4. Record shows that an incident occurred on 30.4.2023. The dead body of deceased namely, Om Prakash, cousin brother of first informant was found in the house of the applicant itself. Thereafter the village Chaukidar namely Jogindar gave an information of the said occurrence at the concerned Police Station, which fact is clearly explicit from the G.D. entry of concerned Police Station dated 30.4.2023, copy of which is on record at page 36 of the paper book.

5. On the aforesaid information, the inquest (Panchayatnama) of the body of deceased was conducted. 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 specified as injuries sustained by the deceased on his head. Thereafter, post mortem of the body of deceased was conducted. In the opinion of autopsy surgeon, who conducted autopsy of the body of deceased, cause of death of deceased was Shock and Hemorrhage due to anti-mortem head injury. The autopsy surgeon found following ante mortem injuries on the body of deceased:

1. Lacerated wound 9 x 6c, at Lt. paratial bone 1 cm back

upper side of Lt. ear.

2. Lt. Parietal bone fracture brain coming out.

3. Abrasion contusion 4 x 2 cm just Rt. Eye brow.

4. lacerated wound 7 x 4 cm back of skull at one bone occipital bone fractured.

6. After about six days from the date of occurrence, a belated F.I.R. dated 5.5.2023 was lodged by the first informant Danveer, cousin brother of deceased and was registered as Case Crime No. 128 of 2023, under section 302/34 IPC, P.S. Mujaria, District Badaun. In the aforesaid F.I.R. three persons namely, Ramwakeel (brother-in-law), Lakhan (cousin brother-in-law), Sheshmani (cousin brother-in-law) of deceased have been nominated as named accused.

7. It is apposite to mention here that first informant is not an eye witness of the occurrence. According to the prosecution story as unfolded in the F.I.R. named accused caused the murder of cousin brother of first informant i.e. the deceased.

8. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of above-mentioned case crime number in terms of Chapter XII Cr.P.C. During course of investigation, Investigating Officer examined first informant and the following witnesses namely (1) Chetan, (2) Somveer, (3) Panna Lal, (4) Karishma, (5) Guddo Devi (wife of deceased), (6) Abhishek, (7) Lakhan and (8) Sheshmani under section 161 Cr.P.C. Out of the aforesaid witnesses examined by Investigating Officer three witnesses namely, Chetan, Somveer and Panna Lal in their statements have stated that applicant was seen running away from the place of occurrence. Another witness namely Guddo Devi (widow of deceased) in her statement before the Investigating Officer has stated that she saw the named accused assaulting her husband i.e. deceased, on account of which he died. As such, this witness alleges herself to be an eye witness of the occurrence. Karishma (daughter of deceased) has narrated the same story which is similar to the statement of her mother Guddo Devi. She has, however, stated that she is not an eye witness of the occurrence but the facts stated by her were disclosed by her mother Guddo Devi.

9. Investigating Officer arrested the applicant Ajit Yadav @ Ram Vakeel on 10.05.2023. On the pointing of applicant, a Sabbal (a heavy iron rod, which is flat at one end and used for making hole

in earth) was recovered from the house of deceased where the applicant was also residing.

10. On the basis of above and other material collected by Investigating Officer, during course of investigation he came to the conclusion that complicity of one of the named accused namely Ajeet Yadav @ Ramvakeel i.e. applicant herein is established in the crime in question. He, accordingly submitted the charge sheet dated 2.6.2023, whereby applicant Ajeet Yadav Alias Ramvakeel has been charge-sheeted under sections 302/34 IPC.

11. Learned counsel for applicant contends that though the applicant is a named and charge sheeted accused but he is innocent. Applicant has been falsely implicated in above mentioned case crime number. As such, applicant is liable to be enlarged on bail. Applicant is the brother-in-law of deceased and was residing with the family of the deceased. According to the learned counsel for applicant, the first informant Danveer, cousin brother of deceased, is not an eye witness of the occurrence giving rise to present criminal proceedings. Therefore, as per the narration contained in the FIR, present case is a case of circumstantial evidence. Consequently, there is no eye witness of the occurrence. 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 by the Apex Court in aforementioned judgment are satisfied against applicant. Up to this stage, there is nothing on record to show that there was strong motive with the applicant to commit the crime in question. According to the learned counsel for applicant, motive plays an important link in the chain of circumstances in a case based on circumstantial evidence. To buttress his submission, he has referred to the judgment of the Supreme Court in ***Nandu Singh Vs. State of M.P., 2022 SCC OnLine SC 1454***. Since there was no previous enmity in between the applicant and the deceased, therefore, no animus can be gathered against applicant for committing the crime in question.

12. However, irrespective of above, the complicity of applicant in the crime in question is sought to be established on the following incriminating circumstances that have emerged against applicant during the course of investigation.

(i). The statements of three witnesses namely Chetan, Somveer and Panna Lal, who in their statements have stated that applicant was

seen running away from the place of occurrence.

(ii). The statement of Guddo Devi (widow of deceased) who alleges herself to be an eye witness of the occurrence and has clearly implicated the applicant in the crime in question.

(iii). The recovery of the alleged weapon of assault (Sabbal) on the pointing of applicant, from the house of deceased.

(iv). The recovery of the dead body from the house of the deceased.

13. With regard to the first incriminating circumstance that has emerged against applicant, the learned counsel for applicant contends that no conviction of an accused can be based on the basis of last seen vide ***Jaswant Gir Vs. State of Punjab (2005) 12 SCC 438*** and ***Jabir Vs. State of Uttarakhand, 2023 SCC OnLine SC 32***. In respect of the second incriminating circumstance, the learned counsel for applicant contends that the statement of Guddo Devi was recorded on 01.06.2023 whereas, the occurrence giving rise to the present criminal proceedings occurred on 30.04.2023. As such, her statement was recorded by the Investigating Officer after more than a period of one month from the date of occurrence. On the above premise, the learned counsel for applicant contends that the statement of the aforesaid witness is unworthy of credit inasmuch as, the delay in giving the statement remains unexplained up to this stage. Reference in this regard is made to the judgment of Supreme Court ***Shahid Khan Vs. State of Rajasthan, (2016) 4 SCC 96***, wherein the Apex Court has observed that where the statement of an eye witness is recorded with delay, the same becomes suspicious. It is lastly contended that simply on the basis of recovery of the dead body of deceased and the alleged weapon of assault (which was not having blood stains) from the house of deceased where the applicant was also residing cannot be taken as circumstances sufficient enough to infer the guilt of applicant in the crime in question. On the above conspectus, he contends that applicant is liable to be enlarged on bail.

14. Even otherwise, applicant is man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 10.05.2023. As such, he has undergone 6 and 1/2 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 on record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, it is 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.

15. Per contra, the learned A.G.A. has opposed the prayer for bail. Learned A.G.A. contends that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. According to the learned A.G.A., irrespective of the submissions urged by the learned counsel for applicant, the following two incriminating circumstances namely the recovery of dead body from the house of deceased of which the applicant was an inmate and the recovery of weapon of assault on the point of applicant clearly implicate the applicant in the crime in question. Apart from above, as per the report of the Autopsy Surgeon, the deceased had sustained injuries on his head which could have been caused by the weapon of assault recovered on the pointing of applicant. Thus the recovery of the weapon of assault is clearly corroborated by the medical evidence on record. On the above conspectus, the learned A.G.A. contends that no sympathy be shown by this Court in favour of applicant. 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.

16. Having heard, the learned counsel for applicant, 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 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 Birdhichand Sarda (Supra)**, however, up to this stage, none of the parameters laid down by the Apex Court in aforementioned judgment are satisfied against applicant, the first informant Danveer, cousin brother of deceased, is not an eye witness of the occurrence giving rise to present criminal proceedings, there is nothing on record to show that there was strong motive with the applicant to commit the crime in question, motive plays an important link in the chain of circumstances in a case based on circumstantial evidence vide **Nandu Singh Vs. State of M.P., 2022 SCC OnLine SC 1454**, since there was no

previous enmity in between the applicant and the deceased, therefore, no animus can be gathered against applicant for committing the crime in question, the complicity of applicant in the crime in question is sought to be established on the aforementioned incriminating circumstances that have emerged against applicant during the course of investigation, no conviction of an accused can be based on the basis of last seen vide **Jaswant Gir (Supra)** and **Jabir (Supra)**, the statement of the witness of last seen is unworthy of credit inasmuch as, the delay in giving the statement remains unexplained up to this stage, the statement of an eye witness if recorded with delay, the same becomes suspicious vide **Shahid Khan (Supra)**, simply on the basis of recovery of the dead body of deceased and the weapon of assault from the house of deceased where the applicant was also residing cannot be taken as a circumstance sufficient enough to infer the guilt of applicant in the crime in question, 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 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 comment on the merits of the case, applicant has made out a case for bail.

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

18. Let the **applicant-Ajeet Yadav Alias Ramvakeel**, 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.

19. 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 :- 5.12.2023

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