

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41246 of 2023

Applicant :- Lov Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashutosh Kumar Mishra, Amit Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Amit Kumar, 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-**Lov Yadav** seeking his enlargement on bail in Case Crime No.145 of 2021, under Sections 147, 148, 304, 323, 504, 506 I.P.C., Police Station Bhaluani, District Deoria during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 05.11.2021, a prompt F.I.R. dated 05.11.2021 was lodged by first informant Umesh Yadav (husband of the deceased) and was registered as Case Crime No.145 of 2021, under Sections 147, 148, 304, 323, 504, 506 I.P.C., Police Station Bhaluani, District Deoria. In the aforesaid F.I.R. 7 persons namely Lalan Yadav, Brijesh Yadav, Kush Yadav, Akhilesh Yadav, Rajan Yadav, Muttu Yadav and Lov Yadav have been nominated as named accused whereas 15 unknown persons have also been arraigned as accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that named accused fired a gun shot on the head of the wife of first informant. The F.I.R. further records that the injured was got admitted at District Level Hospital at Deoria.

6. After above-mentioned F.I.R. was lodged the injured succumbed to the injury sustained by her. She accordingly expired on 11.11.2021. Consequently, the case was converted under Section 304 I.P.C. Thereafter the inquest of the deceased (Panchayatnama) was conducted. In the opinion of the witnesses of inquest (Panch Witnesses) the nature of death of the deceased was characterized

as homicidal and the cause of death was said to be head injury sustained by the deceased. Thereafter, post mortem of the body of deceased was conducted. In the opinion of autopsy surgeon who conducted autopsy of the body of deceased, the cause of death of deceased was opined as shock and hemorrhage as a result of ante-mortem injury. The autopsy surgeon from following ante-mortem injuries on the body of deceased:

1. Stich wound 32 cm Rt frontal to left.. enclosed parietal & occipital no or Stich standing 4 cm above both eyebrow left temporal.

2. Stich Wound 4 cm above Rt temporal area 3 cm above Lt upper pinna....

3. Stich wound 1 cm on chin.

4. Stich wound 9 cm left middle lateral side or umbilicus no of stricha bone recovered left side medle abdomen Ar on open lower abel temporal.

7. Learned counsel for applicant submits that after completion of investigation, Investigating Officer submitted the charge sheet dated 22.01.2022, whereby six of the named accused were charge sheeted. Subsequently, Investigating Officer has submitted the supplementary charge sheet on 01.08.2022 whereby, three other accused have also been charge sheeted.

8. Learned counsel for applicant submits that six of the charge sheeted accused have already enlarged on bail by this Court. The details of the same are as under:

Criminal Misc. Bail Application No.20192 of 2022 (Lallan Yadav Vs. State of U.P. Through Secretary Home) was allowed vide order dated 06.06.2022.

Criminal Misc. Bail Application No.9151 of 2022 (Brijesh Yadav Vs. State of U.P. Through Secretary Home At Lucknow) was allowed vide order dated 04.05.2022.

Criminal Misc. Bail Application No.35929 of 2022 (Kush Yadav Vs. State of U.P.) was allowed vide order dated 29.08.2022.

Criminal Misc. Bail Application No.38296 of 2022 (Akhilesh Yadav Vs. State of U.P.) was allowed vide order dated 19.09.2022.

Criminal Misc. Bail Application No.15996 of 2023 (Mantu Yadav

Vs. State of U.P.) was allowed vide order dated 110.04.2023.

9. It is then contended that the case of the present applicant is similar and identical to the aforementioned charge sheeted/bailed out co-accused. There is no such distinguishing feature on the basis of which the case of present applicant could be so distinguished from aforementioned bailed out co-accused so as to deny him bail. He therefore submits that in view of above and for the facts and reasons recorded to the bail orders of aforementioned co-accused, applicant is also liable to be enlarged on bail on the ground of parity.

10. It is then contended that in respect of the same occurrence another F.I.R. dated 05.11.2021 was lodged from the side of applicant by first informant Brijesh Yadav, which was registered as Case Crime No. 146 of 2021. In the aforesaid F.I.R. eight persons have been nominated as named accused namely Indal Singh, Mother of Indal, Umesh Yadav, Uma Shankar Yadav, Dinesh Pandey, Adhya, Badal Yadav, and Dharmendra Yadav whereas, seven unknown persons have already arraigned as accused.

11. According to the learned counsel for applicant one person namely Sanju died on account of assault committed by named/not named accused.

12. With reference to above, the learned counsel for applicant submits that occurrence is admitted to the parties inasmuch as cross F.I.R.'s. have been lodged from both the sides. In view of above, primary issue that will be emerge for consideration is as to who is the aggressor. Upto this stage, no material has been gathered by the Investigating Officer, on the basis of which, the aggressor of the crime in question could be conclusively decided.

13. 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 07.06.2022. As such he has undergone more than one 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 against applicant stands crystallized. However, 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, 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 present application for bail. However, he could not dislodge the factual/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, complicity of accused-applicant and accusation made coupled with the fact that the occurrence is admitted to the parties, cross F.I.R's. have been lodged from both sides, upto this stage, no such evidence has emerged on the basis of which the aggressor in the crime in question can be decided conclusively, similarly situate and circumstanced other named/charge sheeted co-accused have already enlarged on bail, the learned A.G.A. could not point out any such circumstance distinguishing the case of present applicant from other bailed out co-accused so as to deny him bail, inspite of the fact that the charge sheet has been submitted, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the course of trial, the clean antecedents of the 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.

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

17. Let the applicant- **Lov Yadav**, 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.

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 :- 30.10.2023

Imtiyaz