

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41524 of 2023

Applicant :- Priyanshu Sinha @ Prashant Shrivastava

Opposite Party :- State of U.P.

Counsel for Applicant :- Zafar Abbas, Harsh Srivastava, Sarve Nazir

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33199 of 2023

Applicant :- Rashid

Opposite Party :- State of U.P.

Counsel for Applicant :- Shashi Kant Dwivedi, Naushad Alam

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Zafar Abbas, the learned counsel for both the applicants and the learned A.G.A. for State.

2. Perused the record.

3. These applications for bail have been filed by applicants Priyanshu Sinha @ Prashant Shrivastava and Rashid, seeking their enlargement on bail in Case Crime No. 264 of 2022, under Sections 302, 34, 147, 120B IPC, Police Station- Shivpur, District Varanasi during the pendency of trial.

4. The first bail application of applicant- Rashid was rejected vide order dated 16.3.2023, passed in Criminal Misc. Bail Application No. 55386 of 2022 (Rashid Vs. State of U.P) .For ready reference, the same is reproduced herein under:

"Heard Sri Naushad Alam, learned counsel for the applicant, learned A.G.A. for the State, and perused the record.

This application has been filed with a prayer to release the applicant on bail in case crime No. 264 of 2022, under sections 302, 34, 147, 120-B IPC, P.S. Shivpur, District Varanasi.

It is contended by learned counsel for the applicant that applicant has been

falsely implicated in the present case. Further contended that in the present case applicant is not named in the FIR. There is no eye witness account of the alleged incident, both the parties are of the same family and property dispute is going on. The applicant is not a family member of the deceased. The named co-accused have been seen in CCTV footage. The applicant has no concern in the alleged offence and lastly argued that applicant is in jail since 08.07.2022.

Per contra learned A.G.A. for the State rebutted the above arguments stating that although the applicant-accused is named in the FIR but the independent eye witness namely Sunil Singh has stated in his statement under section 161 Cr.P.C. that when he was going with the injured (Since deceased) to the hospital, the deceased written the name of real assailant Akhilesh on whose complicity the deceased has shot dead who were running on motorcycle and they have also been seen in the CCTV footage (As has been mentioned in parcha No. 20 of the case diary), the cause of death is gun shot injury and the gravity of the offence is too much, therefore, the applicant may not be released on bail

Having considered the submissions raised by the counsel for the applicant-accused and the objections raised by learned A.G.A. for the State, gravity and severity of the offence and conduct of the applicant-accused, I am of the view that prima facie at this stage grounds are not sufficient to enlarge the applicant-accused on bail. Accordingly, prayer for bail is refused.

Accordingly, this application is dismissed. "

5. Record shows that in respect of an incident which is alleged to have occurred on 4.7.2022, a prompt F.I.R dated 4.7.2022 was lodged by first informant, Champa Devi and was registered as Case Crime No. 264 of 2022, under Sections 302, 34, 147, 120B IPC, Police Station- Shivpur, District Varanasi. In the aforesaid F.I.R. two persons namely, Akhilesh and Sonu have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that when husband of the first informant was alone at home as other family members had gone to attend the marriage of one Mahesh at a temple, named accused assaulted the husband of the first informant, on account of which he sustained a gun shot injury on his face. However, the husband of the first informant scummed to the injuries sustained by him while undergoing treatment at B.H.U., Varanasi.

7. After aforesaid F.I.R. 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. In the opinion of 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 gun shot injuries sustained by the deceased. Subsequent to above, 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 shock as a result of ante-mortem fire-arm injuries. The autopsy surgeon found following ante-mortem injuries on the body of deceased:-

1. Firearm entry wound 1.0 cm in driveable with didth inverted column with fatling mark around the entire entire wound 2.0 cm in diamter along with colour burn in front of face left side located on left mesilla 5 cm below left eyebrow 6.0 cm away from tip of nose 11.0 cm from left maxilla

2. Exit wound 2.0 cm in .. back side of neck left side 2.0 cm away from mid liine 14.0 cm from left eav and 6.0 cm above C-7 vertebral prominence.

3. Black eye of left side.

8. During course of investigation, Investigating Officer examined first informant and other witnesses under section 161 Cr.P.C. Investigating Officer further recovered the CCTV footage from the place of occurrence, on the basis of which, the identity of the accused persons came to surface. On the basis of above and other material collected by the Investigating Officer up to this stage of investigation he came to the conclusion that complicity of the following persons namely Rehan, Rashid, Sonu and Akhilesh is established in the crime in question. He, accordingly, proceeded to arrest the aforementioned accused. Investigating Officer arrested Akhilesh on 6.7.2022. From his persons a country made .32 bore pistol was recovered. Accused Rashid and Rehan were moving on a motorcycle and were arrested after a short police encounter in which, accused Rehan and Rashid sustained gun shot injuries. From the person of Rehan, a country made .315 bore pistol and 3 cartridges were recovered. The motorcycle used in the commission of the crime was also recovered from the joint possession of aforesaid accused as they were riding on the same. Accused Sonu was arrested on 7.7.2022 but nothing was recovered either from his person or his pointing out. As per the confessional statements of Rehan, Rashid and Akhilesh, the role of firing is assigned to accused Akhilesh. On the basis of above and other material collected by Investigating Officer, he came to the conclusion that complicity of the following persons Sonu, Rehan, Rashid, Akhilesh and Priyanshu is established in the crime in question. He,

accordingly, submitted the charge sheet dated 1.10.2022 whereby Rehan, Rashid, Sonu, Akhilesh have been charge sheeted under Sections 302, 34, 120 B, 147 IPC, whereas Priyanshu Sinha @ Prashant Shrivastava has been charge sheeted under Sections 302, 34, 120 B, 147 IPC, vide charge sheet dated 5.4.2023.

9. At the very outset, the learned counsel for applicants contends that though the applicants are not named but charge sheeted accused yet they are liable to be enlarged on bail. One named and charge sheeted and another not named but charge sheeted accused i.e. Sonu and Rehan have already been enlarged on bail. The details of the same are as under:-

"1. Criminal Misc. Bail Application No. 55423 of 2022 (Rahan Actual name Darbej Ahmad Vs. State of U.P), decided on 16.3.2023

"Supplementary affidavit, filed by the learned counsel for the applicant, is taken on record.

Heard learned counsel for the applicant, learned AGA for the State and perused the record.

The present bail application has been filed by the applicant in Case Crime No. 264 of 2022, under Sections 302, 34, 147, 120B IPC, P.S. Shivpur, District Varanasi, with the prayer to enlarge the applicant on bail

It has been argued by learned counsel for the applicant/accused that applicant/accused is innocent and he has been falsely implicated in the present case. The first information report was lodged against co-accused Akhilesh and Sonu alleging that on account of dispute over property, said Akhilesh and Sonu have committed murder of deceased (who was brother of the grand-father of co-accused Akhilesh). The deceased was issueless. Learned counsel submitted that during investigation, the involvement of applicant has been shown on the basis of statement of co-accused Akhilesh but the role of firing at deceased was assigned to co-accused Akhilesh. The recovery of country made pistol has also been made from co-accused Akhilesh. In statement of co-accused Akhilesh regarding applicant merely it was stated that he was accompanying the co-accused Akhilesh on motorcycle. Statement of alleged witness Sunil was also referred, who has inter alia stated that after incident deceased has told the name of co-accused Akhilesh by writing the same at the palm. In alleged CCTV footage also the applicant merely shown sitting on motorcycle along with co-accused persons. It was also submitted that deceased has sustained only one bullet injury and the role of causing said firearm injury has been attributed to co-accused Akhilesh. The applicant has absolutely no motive to commit murder of deceased. It is further submitted that the applicant is languishing in jail since 08.07.2022, having no previous criminal history and that in case the applicant is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

Learned A.G.A. has opposed the prayer for bail. However, it could not be disputed that there is no eye-witness of alleged incident and that role of firing at deceased has been attributed to co-accused Akhilesh.

Considering the submissions of learned counsel for the parties, nature of allegations, period of custody and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, the Court is of the view that a case for bail is made out. Hence, the bail application is hereby allowed.

Let the applicant Rehan Actual Name Darbej Ahmad involved in aforesaid case crime, be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below subject to following conditions:

- 1. The applicant shall not tamper with the evidence during the trial.*
- 2. The applicant shall not pressurize/ intimidate the prosecution witness.*
- 3. The applicant shall appear before the trial court on the date fixed, unless personal presence is exempted.*
- 4. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.*
- 5. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence.*

In case of breach of any of the above condition, the Court concerned shall be at liberty to cancel bail of applicant in accordance with law."

2. Criminal Misc. Bail Application No. 33289 of 2023 (Sonu Vs. State of U.P), decided on 31.7.2023.

"By means of the the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 0264 of 2022 at Police Station-Shivpur District-Varanasi under Sections 302, 34, 147, 120-B I.P.C. The applicant is in jail since 07.07.2022.

The bail application of the applicant was rejected by the learned trial court on 20.06.2023.

The following arguments made by Shri Jitendra Kumar, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Chandan Agrawal, learned AGA from the record, entitle the applicant for grant of bail:

- 1. The applicant was not named in the F.I.R. only on account of a family dispute.*

- 2. There is no direct evidence against the applicant.*
- 3. This is a case of circumstantial evidence and the chain of incriminating circumstances against the applicant is not complete.*
- 4. The applicant was not last seen escaping from the house a time to proximate to the death of the deceased.*
- 5. One Akhilesh is identified as the principal offender who was spotted in the CCTV footage at the site and time of incident.*
- 6. The case of the applicant is distinguishable from that of the principal offender-Akhilesh.*
- 7. No incriminating article which can be connected with the offence has been recovered from the applicant.*
- 8. Apart from the instant case, the applicant does not have any criminal history.*
- 9. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.*

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- Sonu 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 below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted."

10. It is then contended that as per the material on record, it is evident that the role of firing has been assigned to charge sheeted co-accused Akhilesh and the weapon used in the commission of crime has also been recovered on the pointing of charge sheeted co-accused Akhilesh. He, therefore, contends that the case of present applicants is clearly distinguishable from aforesaid charge sheeted co-accused and similar to charge sheeted but bailed out co-accused Sonu and Rehan. He, further contends that there is no such distinguishable feature on the basis of which, the case of present applicants can be so distinguished from other charge sheeted/bailed out co-accused so as to deny them bail. He,

therefore, contends that in view of above and for the facts and reasons recorded in the bail orders of other charge sheeted but bailed out co-accused, applicants are also liable to be enlarged on bail on the ground of parity.

11. Even otherwise, applicants are men of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicant- Priyanshu Sinha @ Prashant Shrivastava is in jail since 29.3.2023, whereas applicant- Rashid is in jail since 8.7.2022. As such, they have undergone sufficient period of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystalized. However, upto this stage, no such, circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. It is thus urged 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 trial.

12. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicants are named as well as charge sheeted accused, therefore they do not deserve any indulgence by this Court. However, he 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, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicants, accusation made coupled with the fact that as per material on record, the role of firing upon the deceased is assigned to charge-sheeted co-accused Akhilesh, the weapon of assault used in the commission of crime has been recovered from charge sheeted co-accused Akhilesh, as such, the case of present applicants is distinguishable from charge-sheeted co-accused Akhilesh, the learned A.G.A. could not point out any such distinguishable feature in the case of present applicants so as to distinguish the case of applicants from other charge sheeted but bailed out co-accused so as to deny them bail, as such, applicants are laible to be enlarged on bail on the ground of parity, the police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized, yet inspite 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, the period of incarceration undergone, the clean antecedents of applicants, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present applications for bail, but without making any comment 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- **Priyanshu Sinha @ Prashant Shrivastava** and **Rashid**, 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 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 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 :- 6.12.2023

Arshad