

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41649 of 2023

Applicant :- Babita

Opposite Party :- State of U.P.

Counsel for Applicant :- Surendra Mohan Mishra, Vishveshwar Mani Tripathi

Counsel for Opposite Party :- G.A., Lokesh Kumar Dwivedi, Rajneesh Tiwari

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47620 of 2023

Applicant :- Sandeep

Opposite Party :- State of U.P.

Counsel for Applicant :- Prateek Kumar, Kokil Agarwal, Shikhar Chandra

Counsel for Opposite Party :- G.A., Lokesh Kumar Dwivedi, Rajneesh Tiwari

and

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48148 of 2023

Applicant :- Kishun

Opposite Party :- State of U.P.

Counsel for Applicant :- Prateek Kumar, Shikhar Chandra

Counsel for Opposite Party :- G.A., Lokesh Kumar Dwivedi, Rajneesh Tiwari

Hon'ble Rajeev Misra, J.

1. Heard Mr. Vishveshwar Mani Tripathi, the learned counsel for applicant-Babita, Mr. Prateek Kumar, the learned counsel for applicants Sandeep and Kishun, the learned A.G.A. for State and Mr. Lokesh Kumar Dwivedi alongwith Mr. Rajneesh Tiwari, the

learned counsel for first informant.

2. Rejoinder affidavit filed by the learned counsel for applicant in Criminal Misc. Bail Application No. 41649 of 2023 (Babita Vs. State of U.P.) in Court today is taken on record.

3. Perused the Court.

4. These applications for bail have been filed by applicants-Babita, Sandeep and Kishun seeking their enlargement on bail in Case Crime No. 113 of 2023 under Sections 147, 148, 149, 323, 307, 302 I.P.C., Police Station-Mohana, District- Siddharth Nagar, during the pendency of trial.

5. Record shows that in respect of an incident, which is alleged to have occurred on 29.05.2023, a prompt F.I.R. dated 29.05.2023, was lodged by first informant-Ram Keshav (brother of the deceased) and was registered as Case Crime No. 113 of 2023 under Sections 147, 148, 323, 307 I.P.C., Police Station-Mohana, District- Siddharth Nagar. In the aforesaid F. I.R., six persons namely Sanjay, Rajkumar, Sandeep (applicant herein), Kishun and Babita (applicants herein) and Kewelee have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that named accused formed an unlawful assembly and assaulted three persons from the side of first informant namely, Ajay Sen, Ramjan and Ramvilas on account of which they sustained injuries. Subsequently, one of the injured namely Ajay Sen succumbed to the injury sustained by him at BRD Medical College, Gorakhpur where he was undergoing treatment. However, prior to the aforesaid F.I.R. an information regarding death of deceased was given by the ward boy namely Sunil at the concerned police station.

7. On the said information 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 categorised as homicidal and the cause of death of deceased was said to be 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 the deceased, the cause of death of deceased was haemorrhage and shock as a result of ante-mortem injury. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"i. Contuse Swelling on whole left eye.

II. Seven stitch present on mid of top of head on cutting underlying bone fracture and hematoma present.

iii. Abraison 4.0 cm x 8.0 cm on right shoulder joint.

8. Learned A.G.A. contends that as per case diary, no medical examination of any other person was conducted. Except for the deceased, no one sustained injury in the crime in question.

9. After registration of aforesaid F.I.R., Investigating Officer proceeded with statutory investigation of afore-mentioned case crime number in terms of Chapter XII Cr.P.C. During pendency of investigation, he examined various eye witnesses namely Ramavtar, Smt. Savitri, Smt. Maya Devi, Rajendra, Shankar, Pradeep Kumar, Shrimal and Ram Vilas under Section 161 Cr.P.C. All these eye witnesses in their first statement have not specified the author of fatal head injury sustained by the deceased. Subsequently, second statements of all the eye witnesses were recorded wherein they have stated that named/charge-sheeted accused Sanjay assaulted the deceased with an iron rod on his head. On the basis of above and other material collected by

Investigating Officer during course of investigation, he came to the conclusion that complicity of all the named accused is established in the crime in question. Accordingly, he submitted the charge sheet dated 03.08.2023 whereby named accused Sanjay, Rajkumar, Sandeep and Babita have been charge sheeted under Sections 147, 148, 149, 323, 307, 302 I.P.C. followed by supplementary charge sheet dated 27.10.2023 whereby remaining named accused Kishun and Kewelee has been charge sheeted under Sections 147, 148, 149, 323, 307, 302 I.P.C.

10. Learned counsel for applicants submit that though the applicants are named as well as charge sheeted accused yet they are liable to be enlarged on bail. Referring to the statements of eye witnesses referred to above, they submit that the role of causing fatal head injury to the deceased is assigned to named/charge-sheeted co-accused Sanjay. They therefore contend that case of present applicants is distinguishable from aforementioned named/charge sheeted co-accused. It the then contended that Applicant-Babita is a lady. Therefore, she is entitled to be benefit of the provisions contained in proviso to Section 437 Cr.P.C. As such, applicants are liable to be enlarged on bail.

11. Even otherwise applicants Sandeep and Kishun are men of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicant Babita has criminal history of one case. However, the same has been duly explained in paragraph 34 of the affidavit filed in support of bail application. Moreover, the applicant-Babita has not been implicated for a heinous or grievous offence. With reference to the three Judges Bench Judgement of the Supreme Court in **Brijmani Devi Vs. Pappu Kumar and Another, (2022) 4 SCC 497**, the learned counsel for applicant-Babita submits that an accused cannot be

denied bail simply on the ground of criminal history. Applicants Babita and Sandeep are in custody since 31.05.2023 and 30.05.2023. As such, they have undergone more than five and a half months of incarceration. Applicant Kishun is in custody since 03.09.2023. As such, he has undergone more than one and a half months of incarceration. Police report (charge-sheet) 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 crystallised. Upto this stage, no such circumstance has emerged on the record necessitating the custodial arrest of applicants during the pendency of trial. They therefore submit 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 for first informant have vehemently opposed the prayer for bail. They submit that since the applicants are named as well as charge-sheet accused, therefore they do not deserve any indulgence by this Court. It is next contended that criminality committed by named and charge sheeted accused including applicants is general and common therefore same is incapable of separation or segregation. As such, no exception can be carved out in the case of applicants. They therefore submit that no sympathy be shown by this court in favor 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, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicants coupled with the fact that applicant

Babita is a lady, therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., as per second statement of the eye witnesses of the occurrence as noted above, role of causing fatal head injury upon the deceased is assigned to named/charged sheeted co-accused Sanjay, the learned A.G.A. as well as the learned counsel representing first informant could not point out any such circumstance distinguishing the case of present applicants from the case of other co-accused so as to deny them bail, the clean antecedents of applicants Sandeep and Kishun, explained criminal history of applicant-Babita, police report (charge-sheet) under 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 crystalized, yet in spite of above, the learned A.G.A. and the learned counsel for first informant could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the course of trial, therefore irrespective of the objections raised by learned A.G.A. and the learned counsel for first informant in opposition of the present applications for bail but without expressing any opinion on the merits of the case, applicants have made out a case for bail.

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

15. Let the applicants-**Babita, Sandeep and Kishun** involved in aforesaid case crime number be released on bail on their furnishing a personal bond each 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) Applicants will not tamper with prosecution evidence.

(ii) Applicants 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) Applicants will not indulge in any unlawful activities.

(iv) Applicants will not misuse the liberty of bail in any manner whatsoever.

16. 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 of applicants and send them to prison.

Order Date :- 21.11.2023

YK