

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42168 of 2023

Applicant :- Shivram

Opposite Party :- State of U.P.

Counsel for Applicant :- Kuldeep Kumar Dixit

Counsel for Opposite Party :- G.A.

And

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40080 of 2023

Applicant :- Shyam Lakhan

Opposite Party :- State of U.P.

Counsel for Applicant :- Suresh Dhar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Kuldeep Kumar Dixit, the learned counsel for applicant in Criminal Misc. Bail Application No.42168 of 2023, Mr. Suresh Dhar Dwivedi, the learned counsel for applicant in Criminal Misc. Bail Application No.40080 of 2023 and the learned A.G.A. for State.

2. Perused the record.

3. These applications for bail have been filed by applicants Shivram and Shyam Lakhan, seeking their enlargement on bail in Case Crime No.71 of 2021, under Section 304 I.P.C., Police Station- Jalalabad, District- Shahjahanpur during the pendency of trial.

4. At the very outset, the learned counsel for applicants submits

that applicants were initially enlarged on bail vide orders dated 11.01.2019 and 15.09.2021 passed in Criminal Misc. Bail Application Nos.47063 of 2018 (Shiv Ram @ Tillan @ Dhillan vs. State of U.P.) and 20541 of 2021 (Ram Lakhan And Another vs. State of U.P.), respectively. The same are accordingly reproduced hereinunder:-

(1) Criminal Misc. Bail Application No.47063 of 2018 (Shiv Ram @ Tillan @ Dhillan vs. State of U.P.).

"Heard learned counsel for the applicant, learned A.G.A. and perused the record.

Learned counsel for the applicant contended that applicant is not named in F.I.R. and has been falsely implicated on the basis of subsequent developments and disclosure name of applicant in the additional statement under section 161 Cr.P.C. wife of deceased recorded after over 50 days of the incident; that after lodging of F.I.R. on 9.2.2017, in the statement of first informant and his brother, there is no whisper of name of applicant, however by way of improvement in the statement of Ashok Kumar, the brother of deceased recorded after a period of 40 days of incident, names of co-accused Satveer and Santosh were introduced, as the persons who were reported to have stayed at the house of deceased on phone by the deceased and after a period of 11 days thereafter in the additional statement of wife of deceased apart from Satveer and Santosh, name of applicant was also introduced; that applicant had no concern with deceased or co-accused persons and had no motive to cause injuries or death of Alok Mishra and Rakesh Mishra; that co-accused Santosh, Harishankar Singh, Beerpal Singh @ Veerpal and Ompal Singh have been granted bail by this Court vide orders dated 11.10.2017, 12.10.2017, 19.12.2017 and 16.2.2018 passed in Criminal Misc. Bail Application Nos.39464 of 2017, 25568 of 2017, 49772 of 2017 and 5639 of 2018, copies of which have been collectively filed at Annexure No.8; that the case of applicant is distinguishable from Pramod @ Biktha; that the applicant has no criminal history; that the applicant undertakes that he will not misuse the liberty of bail; that the applicant is in custody since 8.5.2018.

Learned A.G.A. vehemently opposed the prayer of bail.

Upon hearing learned counsel and perusal of record and considering the complicity of accused, severity of punishment, grant of bail to co-accused as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for bail.

Let the applicant Shiv Ram @ Tillan @ Dhillan be released on bail in Case Crime No.252 of 2017, under Sections 307, 302, 34, 120-B IPC, P.S. Kotwali Mainpuri, District Mainpuri on furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/court

concerned, subject to following conditions:-

(i) The applicant will co-operate with the trial and remain present personally on each and every date fixed for framing of charge, recording of evidence as well as recording of statement under Section 313 Cr.P.C. or through counsel on other dates and in case of absence without sufficient cause, it will be deemed that he is abusing the liberty of bail enabling the court concerned to take necessary action in accordance with the provisions of Section 82 Cr.P.C. or Sections 174A and 229A I.P.C.

(ii) The applicant will not tamper with the prosecution evidence and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant will not indulge in any unlawful activities.

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 and send the applicant to prison."

(2) Criminal Misc. Bail Application No.20541 of 2021 (Ram Lakhan And Another vs. State of U.P.)

"Heard Sri Mohd. Monis, learned counsel for the applicants, learned A.G.A. for the State and perused the record of the case.

An exemption application has been filed on behalf of the applicants along with present application for exempting the filing of certified copy of the F.I.R. as it could not be made available to the applicant due to COVID-19.

The exemption application is allowed.

The filing of certified copy of the F.I.R. is hereby exempted.

The present bail application has been filed on behalf of applicants, Ram Lakhan and Shyam Lakhan with a prayer to release them on bail in Case Crime No. 71 of 2021, under Sections 147, 148, 149, 308, 323, 325, 504, 506 I.P.C., Police Station- Jalalabad District- Shahjahanpur, during pendency of trial.

It has been submitted by learned counsel for the applicants that the applicant are innocent and have been falsely implicated in the present case due to ulterior motive. It is further submitted that the first information report has been lodged against the applicants and three other named persons; there are general allegations of Marpit by lathi and danda have been assigned against the applicants and other co-accused persons; there is no specific role has been assigned against the applicants. The injured Ashok Kumar, received bony fractures in hands and legs; all the injuries are related to non vital parts. Charge sheet has also been submitted in the present case on 02.04.2021 and the applicants are no more required for the purpose of investigation. It is next contended that there is no other previous criminal antecedent to their credit. It is next submitted that there is also no

possibility of the applicants either fleeing away from the judicial process or tampering with the witnesses. The applicants, who are languishing in jail since 04.03.2021, undertakes that they will not misuse the liberty, if granted. It has also been pointed out that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Per contra learned A.G.A. has opposed the prayer for bail. In case the applicants are released on bail, they will again indulge in similar activities and will misuse the liberty of bail.

It is settled position of law that bail is the rule and committal to jail is an exception in the case of State of Rajasthan Vs. Balchand @ Baliay (1977) 4 SCC 308, the Apex Court observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution and opined para 2 "The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. We do. not intend to be exhaustive but only illustrative." and considering the facts of the case and keeping in mind, the ratio of the Apex Court's judgment in the case of Gudikanti Narasimhulu And Ors vs Public Prosecutor, High Court Of Andhra Pradesh, AIR 1978 SC 429, larger mandate of Article 21 of the constitution of India, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused-applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail.

Let applicants, Ram Lakhan and Shyam Lakhan be released on bail in the aforesaid case crime number on their furnishing a personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned with the following conditions-

(i) The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of his absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuses the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal

Code.

(iv) The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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 them in accordance with law.

It is clarified that anything said in this order is limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the petitioner along-with a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing."

5. Learned counsel for applicants submits that applicants were enlarged on bail under the principal sections. However, after the applicants were enlarged on bail, the injured died subsequently on 03.05.2021. As such, the case was converted under Section 304 I.P.C. However, as per the opinion of the autopsy surgeon, the cause of death of the deceased is septicemic shock due to chronic disease and liver disease. Reference was then made to the ante-mortem injuries sustained by the deceased, which were noted by the autopsy surgeon. The same are reproduced hereinunder:-

"(1) Old stitch wound 14 cm. present on front of Lt. lower leg, 7 cm. below Lt. knee joint. Total stitch No.16.

(2) Old stitch wound 8 cm. present on lateral aspect of Lt. lower leg. Total stitch No.6, 7 cm. below Lt. knee joint.

(3) Old stitch wound 11 cm. present on Ante-mortem dial aspect of Lt. lower leg. Total stitch No.9, 10 cm. below left knee joint."

6. On the above premise, the learned counsel for applicants submit that the injuries sustained by the deceased cannot be said to be either fatal or grievous injury. It is lastly submitted that since applicants have already been enlarged on bail and prima-facie the death of the deceased cannot be attributed to any immediate act of applicants, therefore, applicants are liable to be enlarged on bail.

7. Even otherwise applicant - Shyam Lakhan is a man of clean antecedents inasmuch as he has no criminal history to his credit, except the present one, whereas applicant - Shivram is having criminal history of two cases. However, the same have been sufficiently explained in para 24 of the affidavit filed in support of the bail application of applicant Shivram. Referring to the three judges' judgement of the Supreme Court in **Brijmani Devi Vs. Pappu Kumar (2022) 4 SCC 497**, it is contended by the learned counsel for applicants that an accused cannot be denied bail simply on the ground of criminal history. Applicants- Shivram and Shyam Lakhan are in jail since 21.07.2023 and 28.06.2023, respectively. As such, they have undergone more than three months and four months of incarceration respectively. The police report in terms of Section 173(2) Cr.P.C. has already been submitted and therefore, the entire evidence sought to be relied upon by the prosecution against applicants stands crystallized. However, no such circumstance has emerged on the record necessitating the custodial arrest of applicants during the course 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.

8. Per contra, the learned A.G.A. has opposed the present applications for bail. However, he could not dislodge the factual/legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

9. 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 the complicity of applicants and accusation made coupled with the fact that applicants have already been enlarged on bail previously, on account of the death of the injured, the case was converted under Section 304 I.P.C., as per the medical opinion the cause of death of the deceased is septicemic shock due to chronic disease and liver disease, the injuries sustained by the deceased as noted by the autopsy surgeon are by themselves insufficient to cause the death of the deceased, the clean antecedents of the applicant- Shyam Lakhan, the explained criminal history of applicant - Shivram, the three Judges' Bench judgment of the Supreme Court in **Brijmani Devi (supra)**, the period of incarceration undergone, the police report in terms of Section 173(2) Cr.P.C. has already been submitted and therefore, the entire evidence sought to be relied upon by the prosecution against applicants 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 applicants during the course of trial, 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.

10. Accordingly the bail application are **allowed**.

11. Let the applicants **Shivram** and **Shyam Lakhan**, 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 APPLICANTS SHALL FILE AN UNDERTAKING TO THE EFFECT THAT THEY 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 APPLICANTS SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH THEIR COUNSEL. IN CASE OF THEIR ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST THEM UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANTS MISUSE THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE THEIR PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANTS FAIL TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST THEM, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANTS 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 APPLICANTS ARE 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 THEM 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 APPLICANTS.

12. However, it is made clear that any wilful violation of above conditions by the applicants, shall have serious repercussion on their 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 :- 16.11.2023
Zafar