

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42311 of 2023

Applicant :- Mahendra Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar, Jai Prakash Prasad, Savan Kumar

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42313 of 2023

Applicant :- Avdhesh Kumar Chaurasiya

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar, Jai Prakash Prasad, Savan Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Jai Prakash Prasad, the learned counsel for applicants-Mahendra Kumar and Avdhesh Kumar Chaurasiya and the learned A.G.A. for State.

2. Perused the record.

3. These applications for bail have been filed by applicants-Mahendra Kumar and Avdhesh Kumar Chaurasiya, seeking their enlargement on bail in Case Crime No. 82 of 2023, under Sections 304, 323, 325, 504, 506 IPC, Police Station-Golhaura, District-Siddharth Nagar during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 11.06.2023, a delayed FIR dated 16.06.2023 was lodged by first informant-Smt. Sudama Devi and was registered as Case Crime No. 82 of 2023, under Sections 323, 504, 506 IPC, Police Station-Golhaura, District-Siddharth Nagar. In the aforesaid FIR, 4 persons namely - (1) Shivpujan, (2) Avdhesh, (3) Mahendra and (4) Harendra have been nominated as named accused.

5. As per the prosecution story as unfolded in the FIR, 5 persons

namely (1) Smt. Sudama Devi, (2) Ram Surat, (3) Rakesh, (4) Sindhu Devi and (5) Seena Devi sustained injuries. Subsequently, one of the injured namely Ram Surat succumbed to the injury sustained by him. Consequently, the case was converted under Section 304 IPC.

6. In respect of the same occurrence, another FIR dated 16.06.2023 was lodged by first informant-Mahendra Kumar and was registered as Case Crime No. 0083 of 2023, under Sections 323, 504, 506 IPC, Police Station-Golhaura, District-Siddharth Nagar. In the aforesaid FIR, 4 persons namely - (1) Ram Surat, (2) Rakesh, (3) Pravesh and (4) Sarvesh have been nominated as named accused.

7. As per the prosecution story as unfolded in the aforementioned FIR, 2 persons namely Avdhesh and Mahendra Kumar i.e. first informant are alleged to have sustained injuries.

8. Learned counsel for applicants submits that since FIRs have been lodged from both the sides in respect of the same occurrence, therefore, the occurrence is admitted to the parties. In view of above, the primary question to be considered by the Court is as to who is the aggressor. Up to this stage, it can be conclusively concluded as to who is the aggressor in the crime in question.

9. It is next contended that co-accused Shiv Pujan has already been enlarged on bail by this Court vide order dated 29.08.2023 passed in Criminal Misc. Bail Application No. 38131 of 2023 (Shiv Pujan Vs. State of U.P.). For ready reference, the order dated 29.08.2023 is reproduced hereinunder;-

"1. Heard Sri Jai Prakash Prasad, learned counsel for the applicant and Sri Virendra Pratap Singh, learned counsel for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Shiv Pujan, seeking enlargement on bail during trial in connection with Case Crime No. 82 of 2023, under Sections 304, 323, 325, 504, 506 I.P.C., Police Station Golhaura, District Siddharth Nagar.

3. The first information report of the present matter was lodged on 16.06.2023 at 21.00 hours by Smt. Sudama Devi, under Sections 323, 504, 506 I.P.C. against Shiv Pujan the applicant, Awadesh, Mahendra and Harendra alleging therein on 11.06.2023 at about 09 pm due to dispute between the children, the accused persons hurled abuses and in a grove assaulted Ram Surat and Rakesh with kicks, fist and danda. Her devarani Sindhu Devi and Soni Devi intervened to save them who were also

assaulted. Her husband and father-in-law have been taken to the District Hospital for treatment. Later on Ram Surat died and then in the matter Section 304 I.P.C. was added.

4. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the present case has a cross version also of which a report was lodged on 16.06.2023 at about 16.30 hours as Case Crime No. 0083 of 2023, under Sections 323, 504, 506 I.P.C. by Mahendra Kumar against Ram Surat, Rakesh, Pravesh and Sarvesh in which Awadesh received injuries on his head. It is argued that since the present case has a cross version the aggressor at this stage cannot be decided. It is argued that even in the present prosecution case common and general role of assault has been assigned to four accused persons. It is further argued that the deceased died due to septicemia due to antemortem injuries. It is further argued while placing paragraph 22 of the affidavit that the applicant is aged about 64 years. The applicant has no criminal history as stated in para 25 of the affidavit and is in jail since 19.06.2023.

5. Per contra, learned counsel for the State opposed the prayer for bail.

6. After having heard learned counsel for the parties and perusing the record, it is evident that the present case has a cross version also in which one person from the side of the applicant has received injury. The applicant is aged about 64 years. Common and general role has been assigned to the applicant with three other co-accused persons.

7. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

8. Let the applicant- Shiv Pujan, 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant 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) The applicant shall file an undertaking to the effect that he 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, in accordance with law, under section 174-A I.P.C.

(v) 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 him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

9. 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.

10. The bail application is allowed"

10. On the above premise, the learned counsel for applicants submits that applicants are also liable to be enlarged on bail.

11. As per the post mortem report of the body of deceased, the cause of death of deceased is Septicemia and Shock due to ante-mortem injury. According to the Autopsy Surgeon, the following ante-mortem injuries were found on the body of deceased:-

"(1) Healed abrasion 4 x 2 cm on Lt. side of head 4 cm above from Lt. eyebrow.

(2) Sized 4 cm abrasion, 6 x 3 cm of Rt. fore arm 11 cm above from Rt. wrist joint.

(3) Contused 14 x 8 cm Rt. shoulder joint.

(4) 4 stitches present in Lt. middle finger on base of mid finger.

(5) Healed abrasion 2 x 0.6 cm on lateral side of Lt. chest 5 cm away from Lt. nipple.

(6) Contusion 22x15 cm on Rt. hip joint.

(7) Stitched wound over anterior part of Rt. leg (lower) sized 11 x 2 cm number of stitches and push rooked present over wound.

(8) Healed abrasion 1 x 0.5 cm Lt. fore arm 2 cm above from Lt. wrist joint.

(9) Stitched wound over outer part of Rt. lower leg size 13 x 3 cm number of stitched.

(10) Pus rooked present over wound gap wound present."

12. He, therefore, contends that allegations made against the named accused is common. The deceased has not sustained any grievous or fatal injury on any vital parts of the body.

13. Even otherwise, applicants are men of clean antecedents inasmuch as, they have no criminal history to their credit except the present one. Applicants are in jail since 19.06.2023. As such, they have undergone more than 4 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 applicants stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicants during the pendency of trial. On the above premise, he submits 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.

14. 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, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

15. Having heard, the learned counsel for applicants, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that the occurrence is admitted to the parties inasmuch as, cross FIRs have been lodged from both the sides, similarly situate and circumstanced co-accused Shiv Pujan has already been enlarged on bail, up to this stage, no such concrete material has emerged on the basis of which, the aggressor in the crime in question can be defined, the clean antecedents of applicants, 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 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 pendency 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 comments on the merits of the case, applicants have made out a case for bail.

16. Accordingly, the bail applications are **allowed**.

17. Let the **applicants-Mahendra Kumar and Avdhesh Kumar Chaurasiya**, be released on bail in the aforesaid case crime number on their 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.

15. 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 :- 30.10.2023/Vinay