

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42035 of 2023

Applicant :- Ankur

Opposite Party :- State of U.P.

Counsel for Applicant :- Rakesh Kumar Gupta

Counsel for Opposite Party :- G.A., Mayank Yadav, Vivek Kumar Singh

Hon'ble Rajeev Misra, J.

1. Supplementary affidavit filed by the learned counsel for applicant in Court today is taken on record.
2. Heard Mr. O. P. Singh, the learned Senior Counsel assisted by Mr. Rakesh Kumar Gupta, the learned counsel for applicant, the learned A.G.A. for State and Mr. Mayank Yadav, the learned counsel representing first informant.
3. Perused the record.
4. This application for bail has been filed by applicant Ankur, seeking his enlargement on bail in Case Crime No.0321 of 2022, under Section 302 I.P.C., Police Station- Ramala, District- Baghpat during the pendency of trial.
5. Record shows that in respect of an incident, which is alleged to have occurred in between 02.11.2022 and 03.11.2022, an F.I.R. dated 03.11.2022 was lodged by first informant Indrapal (father of the deceased Jitendra) and was registered as Case Crime No.0321 of 2022, under Section 302 I.P.C., Police Station- Ramala, District- Baghpat. In the aforesaid F.I.R., two persons namely; Ankur (applicant herein) and Narendra have been nominated as named accused, whereas an unknown person has also been arraigned as an

accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that named accused Narendra and Ankur (applicants herein) and an unknown person alongwith the son of the first informant were having dinner together in the *Gher* of Pravin S/o Sukhdev (nephew of the first informant). Subsequently wife of the first informant left the aforesaid persons and proceeded towards her home. Thereafter the first informant heard two gun-shots. He went inside the *Gher* and saw that the dead-body of his son is lying on the ground and soaked in blood. He further saw that three persons, who were sitting alongwith his son and were having dinner, started running from the place of occurrence.

7. After aforementioned 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 the deceased was said to be homicidal and the cause of death of the deceased was said to be gun-shot injury. Thereafter the post-mortem of the body of deceased was conducted. The autopsy surgeon, who conducted autopsy of the body of deceased, opined that the cause of death of deceased is shock and haemorrhage, as a result of ante-mortem injury caused by fire-arm. The autopsy surgeon found following ante-mortem injury on the body of deceased:-

"1. Lacerated wound of size 8 cm. x 1 cm. with a deficient of 1.5 cm. x 2.0 cm., ----- mid, Present over the Rt. handed over to accompany police, 5 cm. above the tempo occipital region, with a visible bullet (Metallic) stacked between the bones, pulled out and sealed and handed over the accompany police, 5 cm. above the Rt. ear pinna.

2. The margins of wounds are irregular, blacked from inside with deficient ----- and nul tissue at the deficient size of the wound.

3. An old ---- scar on the Rt. ankle with puss at end -----.

4. A deep dis ----, Parchyme of the under wound (1) is lacerated with

lacerated ---- Free blood of about 10-11 ml +nt in the scalp."

8. During course of investigation, Investigating Officer examined first informant namely Indrapal and other witnesses under Section 161 Cr.P.C. namely (1) H.M./S.I. - Ranpal Singh (Scribe of the F.I.R.), (2) Birendra Singh (Independent Witness), (3) Mahendri Devi (Eye Witness), (4) Rohit Kumar and (5) Nikhil Kumar. Since Ankur (applicant herein) is a named accused in the F.I.R., he was accordingly arrested on 04.11.2022 and on his pointing a .315 bore countrymade pistol alongwith one empty and three live cartridges were recovered. On the basis of above and other material collected by Investigating Officer, he came to the conclusion that complicity of named accused is fully established in the crime in question. He, accordingly, submitted the charge-sheet dated 12.01.2023, whereby both the named accused Ankur (applicant herein) and Narendra have been charge-sheeted under Section 302 I.P.C., whereas the investigation in respect of not named accused is said to be pending.

9. Learned Senior counsel for applicant submits that though applicant is a named as well as charge-sheeted accused, yet he is liable to be enlarged on bail. As per the material collected up to this stage present case is a case of circumstantial evidence, as such there is no eye-witness of the occurrence. The inference of guilt of an accused in a case based on circumstantial evidence has to be inferred in accordance with the parameters laid down by the Apex Court in **Sharad Birdhi Chand Sharda vs. State of Maharashtra; AIR 1984 S.C. 1622**. However, up to this stage, none of the parameters laid down by the Apex Court in aforementioned judgment are specified against the applicant. The complicity of the applicant in the crime in question is sought to be established in the crime in question on the following grounds:- (1)

Applicant is named in the F.I.R., (2) Applicant was present at the time and place of occurrence, (3) Immediately after the occurrence, the applicants and his associates started running away from the place of occurrence, (4) From the person of applicant, a countrymade pistol of .315 bore was recovered alongwith one empty and three live cartridges, (5) As per the CCTV Footage recovered by the Investigating Officer, the applicant is seen coming to and going out of the place of occurrence.

10. According to the learned Senior Counsel, the aforesaid incriminating circumstances which are said to have emerged against applicant when considered singularly or cumulatively are insufficient to infer the guilt of the accused-applicant. None of the witnesses examined upto this stage has seen the applicant committing the crime in question. The presence of the applicant at the time and place of occurrence may create suspicion against applicant but suspicion howsoever strong cannot take the place of proof. The recovery of countrymade pistol of .315 bore alongwith one empty and three live cartridges is prima-facie false, as it is implanted on the person of applicant. There is no independent witness of recovery. Moreover, the said recovery has been made after one day of the occurrence. The weapon and empty recovered from the person of applicant have not been sent to FSL Laboratory for scientific examination, to ascertain that the weapon recovered from the applicant is the weapon of assault. Apart from above, no motive has emerged against applicant to commit the crime in question even though motive plays an important role took in the chain of circumstances, which is requisite to be established. To buttress his submission, he has referred to the judgment of the Supreme Court in **Nandu Singh Vs. State of M.P. 2022 SCC OnLine SC 1454**.in a case based on circumstantial evidence.

11. 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 04.11.2022. As such, he has undergone one year of incarceration. The police report in terms of Section 173(2) Cr.P.C. i.e. charge-sheet has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged on record necessitating the custodial arrest of applicant during the course of trial. On the above premise, he thus submits that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

12. Per contra, the learned A.G.A. and the learned counsel for first informant have vehemently opposed the present application for bail. They submit that since the applicant is a named as well as charge-sheeted accused, therefore, he does not deserve any indulgence by this Court. There is no shadow of doubt that the applicant was present at the time and place of occurrence, which is the admitted case in the F.I.R. itself. Recovery of the fire-arm from the person of the applicant clearly corroborates with the medical evidence inasmuch as the cause of death of the deceased is gunshot injury. On the above premise, it is thus urged that no sympathy be shown by this Court in favour of applicant. However, he could not dislodge the factual/legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

13. When confronted with above, the learned Senior Counsel for applicant contends that the two incriminating circumstances that have emerged against the applicants:- (a) applicant is a named

accused and (b) recovery of a .315 bore countrymade pistol alongwith one empty and three live cartridges or by themselves not so sufficient incriminating circumstances either singularly or cumulatively so as to infer the guilt of the applicant. In the absence of the F.S.L. report, the weapon recovered on the pointing of applicant, cannot be said to be the weapon of assault. No strong motive has emerged against the applicant for committing the crime in question nor any animus has been gathered against the applicant for committing the crime in question. As such, applicants are liable to be enlarged on bail.

14. Having heard the learned counsel for applicant, the learned A.G.A. for State, Mr. Mayank Yadav, the learned counsel representing first informant, upon perusal of material brought on record, evidence, nature and gravity of offence as well as the complicity of applicant and accusation made coupled with the fact that though the applicant is a named as well as charge-sheeted accused, yet this Court finds that the incriminating circumstances that have emerged against the present applicant is noted hereinabove or by themselves insufficient to infer the guilt of the applicant in the crime in question, 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 prosecution against applicant stands crystallized, yet in spite of above the learned A.G.A. and the learned counsel for the first informant could not point out any such circumstance necessitating the custodial arrest of applicant during he 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.

15. Accordingly the bail application is **allowed**.

16. Let the applicant **Ankur**, 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.

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 :- 16.11.2023

Zafar