

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42105 of 2023

Applicant :- Abhishek

Opposite Party :- State of U.P.

Counsel for Applicant :- A.Z.Khan, Prateek Pandey

Counsel for Opposite Party :- G.A., Ch. Dil Nisar, Rohit Kumar Pandey

Hon'ble Rajeev Misra, J.

1. Heard Mr. A.Z.Khan along with Mr. Prateek Pandey, the learned counsel for applicant, the learned A.G.A. for State and Mr. Rohit Kumar Pandey, the learned counsel for first informant.

2. Perused the record.

3. This bail application has been filed by the applicant Abhishek seeking his enlargement on bail in Case Crime No. 338 of 2023, under Section 304 IPC, P.S. Sadar Bazar, District Sahrarunpur during the pendency of appeal.

4. Record shows that an incident, is alleged to have occurred on 05.08.2023, in which one person namely, Sonu sustained injuries. The injured Sonu was taken to the hospital for medical treatment. As per the medico legal report the injured Sonu sustained following injuries on his person:

(1) Stitched wound of 6 cm with 11 stitches on left side top of head 9 cm above from left ear.

(2) stitched wound of 4 cm with 8 stitches on left side back of head 9 cm away from left ear.

(3) Stitched wound of 4 cm with 6 stitches on back of head at mid line 10 cm from right ear.

5. Unfortunately, the injured scummed to the injuries sustained by him on 5.8.2022 itself.

6. Thereafter a delayed F.I.R. dated 06.08.2023 was lodged by first informant Sri Samay Singh (father of the deceased) and was

registered as Case Crime No. 338 of 2023, under Section 304 IPC, P.S. Sadar Bazar, District Sahrarunpur. In the aforesaid F.I.R., two persons namely Shashi and Baharat have been nominated as named accused.

7. The gravamen of the allegations made in the F.I.R. is to the effect that named accuse Shashi and Bharat came to the house of first informant and took Sonu, the son of first informant for some work. Subsequently, information was received by the first informant from one Shubham, son of the brother in law of first informant that son of first informant is lying unconscious near the temple and his body is soaked with blood.

8. After aforementioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. The dead body of deceased was recovered. Thereafter, the inquest (Panchayatnama) of the body of deceased was conducted on 6.8.2023. In the opinion of witness of inquest (panch witnesses) the nature of death of deceased was categorized as homicidal and the cause of death of deceased was specified as head injury sustained by deceased. Subsequent to above, the post mortem of the body of deceased was conducted on the same day. In the opinion of autopsy surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was shock, coma and hematoma, as a result of ante-mortem injuries. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:

"1. Sticked wound of 6 cm With 11 stiches on left side top of head 9 cm above from left ear

2. Sticked wound of 4 cm with 8 stiches on left side back of head 9 cm away from left ear

3. Sticked wound of 4 cm with 6 stiched on back of head at mid line 10 cm from rifht ear"

9. Investigating Officer, thereafter, recorded the statement of first informant Sri Sanjay Singh (father of the deceased). However, nothing concrete emerged in this statement of first informant. On the pointing of the first informant, Investigating Officer visited the place of occurrence and various recoveries were made from the spot. The same relate to Articles used in consumption of liquor. The said fact is clearly explicit from CD Parcha No. 8 Subsequent to above, two witnesses namely Mamraj and Nathiram disclosed to the first informant about the complicity of Mohar Singh and Abhishek in the crime in question. As per the disclosure made by

aforesaid witnesses, the deceased was last seen in the company of aforementioned accused and sounds of shout were also heard from the direction of the place of occurrence. Accordingly, the second statement of first informant namely Sri Sanjay Singh was recorded wherein the complicity of two persons namely Mohar Singh and Abhishek (applicant herein) came to surface. Thereafter, Investigating Officer examined the following witnesses Shashi and Bharat. The theory of last seen emerged against Mohar Singh and Abhishek. Accordingly, Investigating Officer arrested Mohar Singh and Abhishek Singh who are father and son. On the pointing of Abhishek Singh, the Danda which was used in the commission of the crime was recovered from the bushes in an open place. Subsequently, the statements of the two accused i.e. Mohar Singh and Abhishek Singh were recorded. The two accused admitted their guilt. However, as per the said statements the role of assault on the head of the deceased by the Danda was assigned to accused Mohar Singh whereas the role of catching hold was assigned to accused Abhishek Singh. On the basis of above and other material collected by Investigating Officer during the course of investigation, he came to the conclusion that complicity of applicant Abhishek and his father Mohar Singh is fully established in the crime in question. He, accordingly, submitted the charge sheet dated 03.11.2023 whereby aforesaid accused have been charge sheeted under Sections 304 IPC.

10. Mr. A.Z. Khan, the learned counsel for applicant contends that though the applicant is charge sheeted accused, yet he is liable to be enlarged on bail. Applicant is not named in the F.I.R. he is otherwise innocent. Present case is a case of circumstantial evidence and therefore, there is no eye witness of the occurrence. The complicity of an accused in a case based on circumstantial evidence has to be considered in the light of parameters laid down by Supreme Court in **Sharad Birdhichand Sarda, Vs. State of Maharashtra, AIR 1984 Supreme Court 1622**. However, upto this stage, none of the parameters laid down in aforementioned judgement are satisfied against applicant. No strong motive has emerged against applicant to commit the crime in question. With reference to case diary, learned counsel for applicant has invited attention of Court to the place of occurrence, as noted in the case diary and on basis thereof he submits that various articles were recovered by Investigating officer, which was utilized for bringing liquor by the applicant along with Mohar Singh. He, therefore, contends that since no strong motive has emerged against applicant to commit the crime in question, Since motive plays an important link in the chain of circumstances in the case based on circumstantial evidence, therefore, applicant is liable to be

enlarged on bail. Since there was no previous enmity in between the applicant and the deceased, as such, no enemies can be said to commit the crime in question. The theory of last seen, as emerged in the statement of two witness examined under section 161 Cr.P.C. namely, Maniraj and Nathiram is also not such a circumstance to infer the guilt of applicant, as no conviction can be based on the basis of last seen. In support of above, reliance is placed upon **Jabir Vs. State of Uttarakhand, 2023 SCC Online SC 32 and Jaswant Gir Vs. State of Punjab (2005) 12 SCC 438**

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 8.8.2023. As such, he has undergone three months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized. However, upto this stage, no such, circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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 trial.

12. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant, with reference to the record at this stage.

13. Having heard the learned counsel for applicant, 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 applicant, accusation made coupled with the fact that present case is a case of circumstantial evidence, therefore, there is no eye witness of the occurrence, complicity of an accused in a case based on circumstantial evidence can be inferred only in accordance with parameters laid down by Apex Court in **Sharad Birdhichand Sarda, Vs. State of Maharashtra, AIR 1984 Supreme Court 1622**, however, none of the parameters laid down by Apex Court in aforesaid judgement are satisfied against applicant, up to this stage, the theory of last seen has is emerged against applicant in the statements of two witnesses namely, Maniraj, and Nathirram can not be taken as a basis to convict the applicant, in view of law laid down by Apex Court as noted above, no strong motive has emerged against applicant for committing the crime in question,

whereas motive plays an important link in the chain of circumstances in a case based on circumstantial evidence vide **Nandu Singh, Vs. State of M.P. 2022 SCC ON Lince SC 1454**, no animus can be gathered against applicant for committing the criminality in question, as there was no pre-existing enmity, the occurrence has taken place under the spell of intoxication as the site plan with regard to place of occurrence and inspection memo of the same clearly , shows various articles used for consuming liquor was found, there does not appear to be any calculated mensceria to commit the crime in question, the clean antecedents of applicants, the period of incarceration undergone, 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 applicant stands crystallized. However, up to this stage, no such circumstance has emerged, necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, the period of incarceration undergone but without making any comment on the merits of the case, applicant has made out a case for bail.

14. Accordingly, the bail application is **Allowed**.

15. Let the applicant **Abhishek**, 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 :- 4.12.2023

Arshad