

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42236 of 2023

Applicant :- Panney Lal Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Adya Prasad Tewari

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Adya Prasad Tewari, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Panney Lal, Yadav, seeking his enlargement on bail in Case Crime No. 355 of 2023, under Sections 302, 201, 120-B, 34 IPC, Police Station-Chauri Chaura, District-Gorakhpur during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred in between 30.07.2023 to 31.07.2023, a prompt FIR dated 31.07.2023 was lodged by first informant-Smt. Reeta Devi (sister of the deceased) and was registered as Case Crime No. 355 of 2023, under Section 302 IPC, Police Station-Chauri Chaura, District-Gorakhpur. In the aforesaid FIR, one Lalbachan (Gram Pradhan) has been nominated as solitary named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused-Lalbachan burnt the brother of the first informant to death.

6. After above-mentioned FIR 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 on 31.07.2023. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as homicidal and the cause of death of deceased was said to be burn injuries. Thereafter, the post mortem of the body of deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of the

deceased was ante-mortem burn injuries. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. Superficial to deep chest burn all over body including scalp hair palm, pugilistic posture.

2. On cutting skin over scalp hemotoma present over (Rt) parietal occipital region on cutting skull bone brain congested."

7. The post mortem report of the body of deceased further records that soot particles were present in the trachea. During course of investigation, Investigating Officer examined following witnesses under Section 161 Cr.P.C.:- (1) Smt. Reeta Devi (First informant), (2) Geeta Devi, (3) Raj Kumar, (4) Jai Govind, (5) Dhruv Narayan, (6) Ram Dahal, (7) Dr. Rajneesh Kumar Rahul, (8) Bechani Devi, (9) Maina Devi (mother of the deceased), (10) Sukhdev, (11) Kailash Prasad, (12) Deenanath, (13) Virendra, (14) Smt. Priya Devi, (15) Surendra Paswan, (16) Murari Yadav, (17) Ram Kishun Rajbhar, (18) Ram Briksh Paswan and (19) Kanhaiya Rajbhar.

8. Initially, present case was case of circumstantial evidence. However, after the statements of some of the witnesses named above was recorded, the case got converted into one of direct evidence. Out of the aforementioned witnesses examined by the Investigating Officer, 3 of the witnesses namely (1) Kanhaiya Rajbhar, (2) Maina Devi (mother of the deceased) and (3) Bechani Devi are said to be eye witnesses of the occurrence. Aforesaid witnesses in their statements have clearly and categorically stated that they have witnessed the crime in question. The manner of assault and the way in which torching was committed has also been detailed in the statements of some of the eye witnesses referred to above. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of 4 persons namely (1) Ramjeet Yadav, (2) Mahendra Yadav, (3) Panney Lal Yadav (applicant herein) and (4) Yogendra is established in the crime in question. He, accordingly, submitted the charge sheet dated 09.09.2023 whereby aforementioned accused have been charge sheeted under Sections 302, 201, 120-B, 34 IPC.

9. Mr. A.P. Tewari, the learned counsel for applicant contends that applicant is innocent. Applicant is not named in the FIR. He has been falsely implicated in the crime in question. Even though, applicant is a charge sheeted accused yet he is liable to be enlarged on bail. Initially, the present case is a case based upon circumstantial evidence, therefore, there is no eye witness of the

occurrence mentioned in the FIR. The complicity of an accused in a case based on circumstantial evidence has to be inferred in accordance with the parameters laid down by Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622 (Paragraph 152)**. However, up to this stage, none of the parameters laid down in aforementioned judgment are satisfied against applicant. Subsequently, the prosecution introduced 3 witnesses namely (1) Kanhaiya Rajbhar, (2) Maina Devi (mother of the deceased) and (3) Bechani Devi in support of the prosecution case. The said witnesses are said to be eye witnesses of the occurrence. The statements of Bechani Devi and Maina Devi under Section 161 Cr.P.C. were recorded on 31.07.2023. Thereafter, the second statement of Bechani Devi and Maina Devi were recorded on 27.08.2023 vide C.D. Parcha No.-9. The statement of Kanhaiya Rajbhar was recorded on 27.08.2023. The complicity of applicant in the crime in question appeared in the second statement of Bechani Devi and Maina Devi as well as the statement of Kanhaiya Rajbhar. On the above premise, he submits that the statements of the aforesaid eye witnesses are unworthy of reliance inasmuch as, the silence on the part of the aforesaid witnesses for a period of 27 days from the date of occurrence does not speak of their bona-fide, even when, one of the witnesses namely Maina Devi is the mother of the deceased. On the above premise, he, therefore, contends that the aforesaid witnesses are neither credible nor reliable. Therefore, their statements are unworthy of credit. To lend legal support to his submission reliance is placed upon the judgment of the Supreme Court in **Shahid Khan Vs. State of Rajasthan, (2016) 4 SCC 96**.

10. 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 03.08.2023. As such, he has undergone more than 3 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. (i.e. charge sheet) has already been submitted. As such, 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 the applicant during the pendency of trial. He, therefore, contends 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.

11. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a charge sheeted accused,

therefore, he does not deserve any indulgence by this Court. According to the learned A.G.A., the complicity of the applicant in the crime in question is fully established as per the statements of 3 witnesses namely (1) Kanhaiya Rajbhar, (2) Maina Devi (mother of the deceased) and (3) Bechani Devi. Kanhaiya Rajbhar is an independent witnesses who has clearly implicated the applicant and other charge sheeted accused in the crime in question. The aforesaid witnesses cannot be said to be an interested or partisan witnesses. The testimony of Kanhaiya Rajbhar cannot be brushed aside at this stage. On the above premise, the learned A.G.A. contends that since the complicity of applicant in the crime in question stands fully established as per the statements of aforementioned witnesses, therefore, no sympathy be shown by this Court in favour of applicant. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

12. Having heard, the learned counsel for applicant, 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 Court finds that though applicant is a charge sheeted accused but his complicity in the crime in question has emerged in the statements of 3 witnesses namely (1) Kanhaiya Rajbhar, (2) Maina Devi (mother of the deceased) and (3) Bechani Devi, however, the statements of aforementioned witnesses were recorded on 27.08.2023 i.e. after 27 days of the occurrence, the silence on the part of the aforementioned 3 witnesses for a period of 27 days including the mother of the deceased is by itself a suspicious circumstance which could not be explained by the learned A.G.A., the judgment of the Supreme Court in the case of **Shahid Khan (Supra)**, 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 applicant 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 applicant during the pendency of trial, the judgment of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373 (Paragraph 5)**, the clean antecedents of 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 comments on the merits of the case, applicant has made out a case for bail.

13. Accordingly, the bail application is **allowed**.

14. Let the **applicant-Panney Lal Yadav**, be released on bail in the 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.

15. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his 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 :- 1.11.2023/Vinay