

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42383 of 2023

Applicant :- Adarsh Dwivedi Alias Chhannu

Opposite Party :- State of U.P.

Counsel for Applicant :- Vimlendu Tripathi, Nand Kishor Mishra

Counsel for Opposite Party :- G.A., Virendra Kumar Gupta

Hon'ble Rajeev Misra, J.

1. Heard Mr. Vimlendu Tripathi along with Mr. Nand Kishor Mishra, the learned counsel for applicant, the learned A.G.A. for State and Mr. Virendra Kumar Gupta, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Adarsh Dwivedi Alias Chhannu seeking his enlargement on bail in Case Crime No. 34 of 2023, under Section 302 IPC, Police Station-Kabrai, District-Mahoba during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 28.02.2023, a prompt FIR dated 28.02.2023 was lodged by first informant-Brijmohan (brother of the deceased-Chunubad Shahu) and was registered as Case Crime No. 34 of 2023, under Section 302 IPC, Police Station-Kabrai, District-Mahoba. In the aforesaid FIR, two persons namely applicant-Adarsh Dwivedi @ Chhannu Dwivedi and Pranjal Triivedi have been nominated as named accused whereas an unknown person has also been arraigned as an accused.

5. The gravamen of the allegations made in the FIR is to the effect that Chunubad Sahu (deceased) brother of the first informant, was working as an accountant in a firm namely, Rak Granite Baghwa Karbai Crusher. On 28.02.2023 at around 9:00 am, named accused alongwith an unknown person came to the office of the deceased and demanded royalty which was refused by deceased on the ground that the same can be paid only by the owner. On account of aforesaid conduct of the deceased, named accused Channu Dwivedi got infuriated. He first abused Chunubad Shahu of mother and sister and out of rage fired gun shot on the chest of the brother of the first informant. The FIR further records that the

accused carried the victim along with his son to the Hospital on their vehicle. However, the victim was declared to be brought dead. The accused, thereafter, ran away.

6. It is apposite to mention here that prior to the lodging of aforesaid FIR, the inquest (Panchayatnama) of the body of deceased was conducted on 28.02.2023, on the information regarding the death of the deceased given at the concerned Police Station by Ramelsh Kumar-Ward Boy, District Hospital, Mahoba. It is on this information that inquest of the body of deceased was conducted. In the opinion of 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 gun shot injury sustained by deceased. Subsequent to above, 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 deceased was Hemorrhage and Shock due to ante mortem fire arm injury. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

" Ante Mortem Injury

1. A firearm entry wound 1.5 cm x 1.5 cm in size oval shape cavity deep present left anterior chest at 4th intercostal spine mid clavicle line cavity deep wound track. Directed downward and medically up to heart and left lung margin of wound inverted blackening tattooing collar abrasion present around entry wound. One pellet present muscle deep cavity.

2. Incised wound of size 17 cm x 10 cm in size left side anterior chest, 5 cm below left lateral clavicle extend to mid sternum irregular shape margin sharp. Incised wound present just below & upper from entry wound."

7. After aforesaid proceedings had been completed that above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. During course of investigation, Investigating Officer examined the son of the deceased namely Ansh Shahu. This witness is an eye witness of the occurrence and he has clearly supported the FIR. He has further detailed the manner of occurrence. As per the statement of aforesaid witness, the complicity of named accused and unknown person is fully established in the crime in question. Apart from above, Investigating Officer also recorded the statement of the first informant-Brijmohan who has also supported the FIR. This witness has mentioned the number of the Car i.e. U.P. 95 U 8740 in which, the accused persons came at the place of occurrence, fired at the brother of the first informant and thereafter, carried

away the victim along with his son to the Hospital. Apart from above, the Investigating Officer examined the following witnesses under Section 161 Cr.P.C.:- (1) Lallu Sahu, (2) Virendra Sahu, (3) Ramesh Sahu, (4) Raj Kumar and (5) Constable Rahul Ranjan, who are witnesses of inquest.

8. On the basis of above and other material collected by the Investigating Officer during course of investigating, he came to the conclusion that complicity of named accused Adarsh Dwivedi and Pranjal Trivedi is established in the crime in question. He, accordingly, arrested both the named accused on 02.03.2023. From the person of Adarsh Dwivedi, a country made 12 bore gun was recovered along with 1 empty and Rs. 500/- cash. From the person of accused Pranjal Trivedi, Investigating Officer recovered a sum of Rs. 200/-. The vehicle alleged to have been used in the commission of crime, number of which is mentioned in the statement of the first informant i.e. U.P. 95 U 8740 was also recovered. Thereafter, the confessional statements of the accused were recorded wherein the named accused admitted their guilt. Their confessional statements are on record at page 68 of the paper book. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of named accused is established in the crime in question. He, accordingly, submitted the charge sheet dated 16.03.2023 whereby, named accused Adarsh Dwivedi @ Chhanu Dwivedi i.e. applicant herein and Pranjal Trivedi have been charge sheeted under Section 302 IPC.

9. At the very outset, Mr. Vimlendu Tripathi, the learned counsel for applicant contends that named and charge sheeted co-accused Pranjal Trivedi has already been enlarged on bail by this Court vide order dated 04.07.2023 passed in Criminal Misc. Bail Application No. 22056 of 2023 (Pranjal Trivedi Vs. State of U.P.). For ready reference, the order dated 04.07.2023 is reproduced hereinunder:-

"Heard Mr. Shalvin, the learned counsel for applicant, the learned A.G.A. for State and Mr. Jwala Kumar Dwivedi, the learned counsel for first informant.

Perused the record.

This application for bail has been filed by applicant Pranjal Trivedi, seeking his enlargement on bail in Case Crime No. 34 of 2023, under section 302 IPC, Police Station- Kabrai District Mahoba during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 28.2.2023, a prompt F.I.R. dated 28.2.2023 was lodged by first informant Brij Mohan (brother of deceased) and was registered as Case Crime No. 34 of 2023, under section 302 IPC, Police Station- Kabrai District Mahoba. In the aforesaid F.I.R. three persons namely, Adarsh @ Channu Dwivedi, Pranjal Trivedi have been nominated as named accused, whereas an unknown person has also been arraigned as an accused.

The gravamen of the allegations made in the F.I.R. is to the effect that Chunnubad Sahu (deceased) brother of the first informant, was working as an accountant in a firm namely, Rak Granite Baghwa Karbai Crusher. On 28.9.2023 at around 9:00 am, named accused alongwith an unknown person came to the office of the deceased and demanded royalty which was refused by deceased on the ground that the same can be paid only by the owner. On account of aforesaid conduct of the deceased, named accused Channu Dwivedi fired gun shot on the chest of the brother of the first informant.

Learned counsel for applicant contends that applicant is a named accused in the F.I.R. He has then invited attention of Court to the statement of first informant which is at page 27 of the paper book. On the basis of above, he contends that role of firing has been assigned to named accused Channu Dwivedi. The only role which has been assigned to applicant is exhortation. The case of applicant is thus distinguishable from aforesaid named accused Channu Dwivedi.

It is next contended by learned counsel for applicant that 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 2.3.2023. As such, he has undergone more than four months of incarceration. The police report under section 73 (2) has already been submitted. As such, the entire evidence sought to be relied upon by prosecution against applicant now stands crystalized. He has thus placed reliance upon the judgment of Supreme Court in Sumit Subhaschandra Gangwal and another Vs. The State of Maharashtra and Another, 2023 Live Law (SC) 373 (Para 5) and on basis thereof he contends that no such circumstance has emerged on the basis of which it can be definitely concluded that custodial arrest of applicant is absolutely necessary during the pendency of trial. He, therefore contends that applicant is liable to be enlarged on bail. In case applicant is enlarged on bail he shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. for State and Mr. Jwala Kumar Dwivedi, the learned counsel for first informant have opposed this application for bail. They submit 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/legal submissions urged by learned counsel for applicant, with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence as well as complicity of applicant, accusation made coupled with the fact that the author of the fatal gun shot injury sustained by deceased is Channu

Dwivedi, the only role assigned to applicant is exhortation, clean antecedents of applicant, Police report in view of Section 173 (2) Cr.P.C. having been submitted, therefore, the entire evidence sought to be relied upon by prosecution stands crystalized, custodial arrest of applicant is absolutely necessary during the course of trial, but without making any comment on the merits of the case, applicant has made out a case for bail.

Accordingly, the bail application is Allowed.

Let the applicant Pranjal Trivedi, 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.

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 :- 4.7.2023"

10. On the above premise, the learned counsel for applicant submits that since criminality committed by both the named and charge sheeted accused is joint and common, therefore, same is incapable of separation or segregation. As accused Pranjal Trivedi has already been enlarged on bail, therefore, the present applicant is also liable to be enlarged on bail.

11. It is next contended that the Autopsy Surgeon, who conducted autopsy of the body of deceased, has found 2 injuries on the body of deceased. However, the second injury (Incised wound) found on the body of deceased remains unexplained up to this stage. With reference to above, it is contended that since the alleged eye witness of the occurrence namely Ansh Shahu has failed to explain as to how the aforesaid injury came to be sustained by the deceased, therefore, the eye witness Ansh Shahu is not a credible witness and therefore, his statement under Section 161 Cr.P.C. is not worthy of trust.

12. According to the learned counsel for applicant, the recovery of 12 bore country made gun is alleged to have been made from the person of applicant on 03.02.2023 i.e. after 4 days of occurrence. The said recovery is false. Same is implanted. There is no independent witness of recovery. As such, the same cannot be relied upon. Moreover, the alleged weapon, which is said to have been recovered from the person of applicant, was sent to the F.S.L. Laboratory for chemical examination. As per the F.S.L. report dated 10.10.2023, the said weapon is not the weapon of assault. It is thus urged that in view of above, it cannot be conclusively concluded that the alleged weapon recovered from the person of applicant is the weapon of assault used in the commission of crime in question. Attention of the Court was then invited to the charge sheet, copy of which is on record at page 82 of the paper book. On the basis of above, it is urged by the learned counsel for applicant that applicant has not been charge sheeted under Section 3/25 Arms Act.

13. It is further contended by the learned counsel for applicant that the confessional statement of accused is inadmissible in evidence by virtue of the provisions contained in Section 25 of the Evidence Act. Since the alleged confession was recorded while the applicant

was in custody, therefore, no credence can be attached to the same nor the same can be relied upon against the applicant at this stage.

14. In the submission of the learned counsel for applicant, the applicant is a young boy aged about 21 years and has been falsely implicated in the crime in question. Reference was made to paragraphs 15 to 19 of the affidavit filed in support of the bail application in support of the said submission. With reference to the judgment of the Supreme Court in ***Lakshmi Singh and Ors. Vs. State of Bihar (1976) 4 SCC 394***, it is urged by the learned counsel for applicant that false implication of an accused is a relevant factor to be considered by Court while considering the guilt of an accused.

15. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 02.03.2023. As such, he has undergone 8 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 applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he 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.

16. Per contra, the learned A.G.A. has opposed the prayer for bail. He contends that since applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The vehicle used in the commission of crime i.e Vehicle No. UP 95 U 8740 was specifically stated in the statement of first informant. Moreover, the said vehicle was recovered on 03.02.2023 when both the named accused were arrested while sitting in the front seats of aforesaid vehicle. It is then submitted by the learned A.G.A. that Ansh Shahu (son of the first informant) is an eye witness of the occurrence. This witness has not only supported the FIR in categorical terms but has also detailed the manner of occurrence and the events subsequent thereto. The applicant has failed to contradict the averments made in the FIR and the statement of the eye witness that the victim and the eye witness were brought to the Hospital by the named accused on their vehicle. The death of deceased was established at Mahoba Hospital which fact is corroborated from the inquest report inasmuch as, the inquest of the body of deceased was conducted on the information given by Ramesh Kumar-Ward Body, District

Hospital, Mahoba. Learned A.G.A. has then submitted that up to this stage, there is no such material on record on the basis of which the very credibility or reliability of the eye witness Ansh Shahu could be doubted. On the above premise, the learned A.G.A. contends that since the complicity of applicant stands fully established in the crime in question and also the fact that applicant is the author of the fatal gun shot injury sustained by the deceased, therefore, the applicant does not deserve any sympathy of this Court. On account of above, the case of present applicant is clearly distinguishable from co-accused Pranjal Trivedi. Furthermore, this Court while deciding the bail application of co-accused Pranjal Trivedi has already recorded that the author of the fatal gun shot injury sustained by the deceased is Chhannu Dwivedi. No such material has been placed to show that the said observations made by Court in earlier order in pursuance. Learned A.G.A. thus concluded that no good or sufficient ground has been made out to enlarged the applicant on bail.

17. When confronted with above, the learned counsel for applicant could not overcome the same.

18. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, complicity of accused, accusations made coupled with the fact that this Court while deciding the bail application of co-accused Pranjal Trivedi has already held that applicant Adarsh Dwivedi is the author of the fatal gun shot injury sustained by the deceased, the eye witness Ansh Shahu has not only supported the FIR but has also detailed the manner of occurrence, there is nothing on record to disbelieve the statement of eye witness Ansh Shahu, even though, he is the son of the deceased, the recovery of the vehicle in which, the accused persons came to the spot and after committing the crime in question carried the deceased to the hospital, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

19. As a result, present application for bail fails and is liable to be rejected.

20. It is accordingly **rejected**.

Order Date :- 17.11.2023/Vinay