

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42679 of 2023

Applicant :- Bhure

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Vashistha

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ajay Kumar Vashistha, 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-Bhure, seeking his enlargement on bail in Case Crime No. 71 of 2023, under Sections 147, 148, 149, 307, 302, 323, 504 IPC and Section 7 Criminal Law Amendment Act, Police Station-Jarifnagar, District-Badaun during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 22.02.2023, a prompt FIR dated 22.02.2023 was lodged by first informant-Beerpal and was registered as Case Crime No. 71 of 2023, under Sections 147, 148, 149, 307, 302, 323, 504 IPC and Section 7 Criminal Law Amendment Act, Police Station-Jarifnagar, District-Badaun. In the aforesaid FIR, 15 persons namely- (1) Dalveer, (2) Bhurran, (3) Hetram, (4) Amar Singh, (5) Reshampal, (6) Radhey Shyam, (7) Chob Singh, (8) Satyapal, (9) Pappu, (10) Kalicharan, (11) Ramgopal, (12) Bhure (i.e. applicant herein), (13) Mallu, (14) Naresh and (15) Morpal have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused formed an unlawful assembly and with common object assaulted various persons from the side of the first informant on account of which, Jay Prakash, Satendra, Mahipal and Hariom sustained gun shot injuries. Two other persons namely the first informant Beerpal and Rohtash have also sustained injuries. Subsequently, three of the injured namely Satendra, Jay Prakash and Hariom died.

6. In respect of the same incident, another FIR dated 22.02.2023 was lodged from the side of the applicant by first informant-Dalveer and was registered as Case Crime No. 72 of 2023, under Sections 147, 148, 149, 307, 302, 323, 504 IPC, Police Station-

Jarifnagar, District-Badaun. In the aforesaid FIR, 7 persons namely- (1) Rohtash, (2) Beerpal, (3) Jay Prakash, (4) Mahipal, (5) Satendra, (6) Bhajanlal and (7) Hariom have been nominated as named accused.

7. The gravamen of the allegations made in the aforesaid FIR is to the effect that named accused formed an unlawful assembly and with common object assaulted certain persons from the side of the first informant of aforementioned FIR in which 2 persons namely Reshampal and Radhey Shyam sustained gun shot injuries. Apart from above, 2 other persons namely Dalveer and another have sustained injuries. Subsequently, injured Resham Pal succumbed to the injuries sustained by him.

8. On the above premise, the learned counsel for applicant contends that since cross FIRs have been lodged from both the sides in respect of the same occurrence, therefore, the occurrence is admitted to the parties. Primary issue which are required to be decided by the Court is;- as to who is the aggressor. Up to this stage, there is nothing on record on the basis of which, it can be conclusively concluded that the applicant or his associates are the aggressors in the crime in question.

9. It is then contended by the learned counsel for applicant that co-accused Pappu has been enlarged on bail by this Court vide order dated 21.09.2023 passed in Criminal Misc. Bail Application No. 38588 of 2023 (Pappu Vs. State of U.P.). For ready reference, the same is reproduced hereinunder:-

"1. Supplementary affidavit filed today on behalf of the applicant is taken on record.

2. Heard Sri Sanjay Kumar Yadav, Advocate holding brief of Sri Sher Bahadur Yadav, learned counsel for the applicant and Sri Manoj Kumar Singh, learned Brief Holder for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 71 of 2023, under Sections 147, 148, 149, 307, 302, 323, 504 IPC and Section 7 Criminal Law Amendment Act, Police Station Jarifnagar, District Budaun, during pendency of the trial in the court below.

4. FIR of the present case was lodged against the applicant and 14 others and according to the FIR on 22.2.2023, applicant and his associates at about 12:45 p.m. made assault and opened fire upon the informant side.

5. It is further mentioned in the FIR that co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam opened indiscriminate firing and due to the firing made by them Jaiprakash, Satendra, Mahipal and Hariom sustained fire arm injuries.

6. It is further mentioned in the FIR that when informant and his brother Rohtash tried to escape then accused persons chased them and caused injuries to them through lathi, danda and spear.

7. It is further mentioned in the FIR that due to fire arm injury, Jaiprakash and Satendra died.
8. Learned counsel for the applicant submitted that totally on the basis of false allegation applicant has been made accused in the present matter alongwith 14 others and he never participated in the present matter.
9. He further submitted that actually informant side was the real aggressor and due to the firing opened by the informant side from the side of applicant one person died and two persons sustained injuries.
10. He further submitted that with regard to the same incident, from the side of the applicant also a FIR was lodged on 22.2.2023 at about 23-24 hours i.e. on same day within one and half hours from the lodgement of the FIR of the present case and therefore, admittedly there is a cross version.
11. He further submitted that in the FIR it is specifically stated that co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam opened fire and in the statements recorded under section 161 Cr.P.C. all the witnesses including injured witnesses specifically stated that only these accused persons were having fire arms and remaining other accused persons including applicant were having lathi-danda and spear and due to the fire opened by co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam deceased sustained injuries and died.
12. He further submitted that although in the FIR, it is alleged that two persons died but subsequently one injured Hariom also succumbed to his fire arm injury and therefore, it is a case of triple murder but allegation of committing murder of all the three persons is not against the applicant.
13. He further submitted that on the general allegation of making assault upon informant and his brother Rohtash, applicant has been made accused alongwith the other remaining accused who were armed with lath-danda and spear.
14. He further submitted that the injury sustained by the informant and his brother Rohtash were not dangerous to life and all the accused persons who were made accused in the FIR, lodged by the applicant side have already been granted bail by this Court.
15. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 25.2.2023, therefore, he may be released on bail.
16. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case of triple murder and three persons sustained injuries but could not dispute the fact that there is a cross version and from the side of applicant also one person lost his life and two persons sustained injuries.
17. Learned AGA also could not dispute the fact that role of firing to all the deceased have been assigned to co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam and there is no allegation that applicant also opened fire.
18. He further could not dispute the fact that all the accused of the cross FIR have already been released on bail and applicant is having no criminal history.
19. I have heard learned counsel for the parties and perused the record of the case.

20. From the perusal of the record, it appears that in the present matter, three persons lost their lives and three persons sustained injuries but from the record, it further reflects that from the side of the applicant also one person died and two persons sustained injuries and from the side of the applicant also, FIR was lodged on same day with regard to the same incident, therefore, there is a cross version.

21. Further, from the FIR and from the statements of the eye witnesses including injured witnesses it appears that role of causing fire arm injuries to all the deceased have been assigned to the co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam and there is no allegation against the applicant that he either opened fire or caused any injury to any of the deceased.

22. Further, from the record it reflects that on the basis of general allegation of causing injury to informant and his brother Rohtash, applicant has been made accused alongwith other remaining accused persons who were not having firearm but from perusal of the injury report of the informant and his brother, it appears that they did not sustain any injury which was dangerous to life.

23. Further, applicant is not having any criminal history and bail application of all the accused persons of the cross FIR, have already been allowed by this Court.

24. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be released on bail.

25. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

26. Let the applicant-Pappu be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

27. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

28. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial."

10. Co-accused-Chob Singh has also been enlarged on bail by this Court vide order dated 25.09.2023 passed in Criminal Misc. Bail Application No. 30927 of 2023 (Chob Singh Vs. State of U.P.). For ready reference, the same is extracted hereinunder:-

"1. Heard learned counsel for the applicant, learned A.G.A for the State

and perused the record.

2. It has been argued by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case. Learned counsel further submits that similarly situated co-accused namely, Pappu has already been enlarged on bail by co-ordinate Bench of this Court vide order dated 21.09.2023 passed in Criminal Misc. Bail Application No. 38588 of 2023, copy of which order has been produced before this Court and is taken on record. It is thus contended that the applicant is also entitled for bail on the ground of parity. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 22.02.2023 having no criminal history.

3. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence. In case the applicant is released on bail he will misuse the liberty of bail, however, could not dispute the submissions of learned counsel for the applicant with regard to parity.

4. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence, and all attending facts and circumstances of the case, without expressing any opinion on merits of the case, this Court is of the view that the applicant has made out a case for bail. Hence the bail application is allowed.

5. Let applicant Chhob Singh involved in Case Crime No. 71 of 2023 under Sections 147, 148, 149, 307, 302, 323, 504 I.P.C., Section 7 of Criminal Law Amendment Act, Police Station Jarifnagar, District Budaun, be released on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

I. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

III. In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the 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 of the Indian Penal Code.

IV. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

6. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted"

11. Co-accused Dalveer has also been enlarged on bail by this Court vide order dated 13.10.2023 passed in Criminal Misc. Bail Application No. 43687 of 2023 (Dalveer Vs. State of U.P.). For ready reference, the same is extracted as under:-

"1. Heard Sri Sher Bahadur Yadav, learned counsel for the applicant and Sri Amarnath Vishwakarma, learned Brief Holder for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 71 of 2023, under Sections 147, 148, 149, 307, 302, 323, 504 IPC and Section 7 Criminal Law Amendment Act, Police Station Jarif Nagar, District Budaun, during pendency of the trial in the court below.

3. FIR of the present case was lodged against the applicant and 14 others and according to the FIR on 22.2.2023, applicant and his associates at about 12:45 p.m. made assault and opened fire upon the informant side.

4. It is further mentioned in the FIR that co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam opened indiscriminate firing and due to the firing made by them Jaiprakash, Satendra, Mahipal and Hariom sustained fire arm injuries.

5. It is further mentioned in the FIR that when informant and his brother Rohtash tried to escape then accused persons chased them and caused injuries to them through lathi, danda and spear.

6. It is further mentioned in the FIR that due to fire arm injury, Jaiprakash and Satendra died.

7. Learned counsel for the applicant submitted that totally on the basis of false allegation applicant has been made accused in the present matter alongwith 14 others and he never participated in the present crime.

8. He further submitted that actually informant side was the real aggressor and due to the firing opened by the informant side, from the side of applicant also one person died and two persons sustained injuries.

9. He further submitted that with regard to the same incident, from the side of the applicant also a FIR was lodged on 22.2.2023 at about 23-24 hours i.e. on same day within one and half hours from the lodgement of the FIR of the present case and therefore, admittedly there is a cross version.

10. He further submitted that in the FIR it is specifically stated that co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam opened fire and in the statements recorded under section 161 Cr.P.C. all the witnesses including injured witnesses specifically stated that only

these accused persons were having fire arms and remaining other accused persons including applicant were having lathi-danda and spear and due to the fire opened by co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam, deceased sustained injuries and died.

11. He further submitted that although in the FIR, it is alleged that two persons died but subsequently one injured Hariom also succumbed to his fire arm injury and therefore, it is a case of triple murder but allegation of committing murder of all the three persons is not against the applicant.

12. He further submitted that on the general allegation of making assault upon informant and his brother Rohtash, applicant has been made accused alongwith the other remaining accused, who were allegedly armed with lath-danda and spear.

13. He further submitted that the injury sustained by the informant and his brother Rohtash were not dangerous to life and all the accused persons, who were made accused in the FIR lodged by the applicant side, have already been enlarged on bail by this Court.

14. He further submitted that bail applications of co-accused Pappu and Naresh have already been allowed by this Court and case of applicant is at par with them.

15. He further submitted that although, apart from the present case, applicant is also having criminal history of one case of Gangsters Act to his credit but criminal history of applicant has been explained in the instant bail applicant and he is in jail since 24.02.2023.

16. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case of triple murder and three persons sustained injuries but could not dispute the fact that there is a cross version and from the side of applicant also one person lost his life and two persons sustained injuries.

17. Learned AGA further could not dispute the fact that role of firing upon all the deceased have been assigned to co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam and there is no allegation that applicant also opened fire.

18. Learned AGA further could not dispute the fact that bail applications of co-accused Pappu and Naresh have already been allowed by this Court and case of applicant is at par with them.

19. However, Learned AGA further pointed out that apart from the present case and case under the provisions of Gangsters Act, applicant is also having criminal history of two other cases but he fairly conceded that remaining both the cases were of minor nature of Sections 323 and 325 IPC.

20. I have heard learned counsel for the parties and perused the record of the case.

21. From the perusal of the record, it appears that in the present matter, three persons lost their lives and three persons sustained injuries but from the record, it further reflects that from the side of the applicant also one person died and two persons sustained injuries and from the side of the applicant also, FIR was lodged on same day with regard to the same incident, therefore, there is a cross version.

22. Further, from the FIR and from the statements of the eye witnesses

including injured witnesses it appears that role of causing fire arm injuries to all the deceased have been assigned to the co-accused Reshampal, Mallu, Amar Singh, Satyapal, Bhurran and Radhey Shyam and there is no allegation against the applicant that he either opened fire or caused any injury to any of the deceased.

23. Further, from the record it reflects that on the basis of general allegation of causing injury to informant and his brother Rohtash, applicant has been made accused alongwith other remaining accused persons who were not having firearm but from perusal of the injury report of the informant and his brother, it appears that they did not sustain any injury which was dangerous to life.

24. Further, bail application of all the accused persons of the cross FIR, have already been allowed by this Court.

25. Further, bail applications of co-accused Pappu and Naresh have already been allowed by this Court and case of applicant is at par with them.

26. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be released on bail.

27. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

28. Let the applicant- Dalveer be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

29. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

30. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial"

12. Co-accused Naresh has also been enlarged on bail by this Court vide order dated 06.10.2023 passed in Criminal Misc. Bail Application No. 42675 of 2023 (Naresh Vs. State of U.P.). For ready reference, the same is reproduced hereinunder:-

"1. Heard Sri Ajay Kumar Vashistha, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I 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- Naresh, seeking enlargement on bail during

trial in connection with Case Crime No. 71 of 2023, under Sections 147, 148, 149, 307, 302, 323, 504 I.P.C. and 7 Criminal Law Amendment Act, Police Station Jarifnagar, District Budaun.

3. The applicant is being prosecuted in Case Crime No. 0071 of 2023 of which a first information report was lodged by Veerpal in which Jai Prakash, Satendra and Hari Om have died whereas the informant Veerpal and Rohtash are the injured. It is pleaded that there is a cross report of the said incident being Case Crime No. 0072 of 2023 lodged by Dalbir against 07 persons in which Resham Pal is the deceased whereas Radhey Shyam and Dalbir are the injured persons.

4. The first information report of the present matter was lodged against 15 persons including the applicant alleging therein that on 22.02.2023 he, his brother Rohtash, father Mahipal, Hari Om, Satendra, Jai Prakash had gone to the fields to put fertilizer in the wheat crop. When they were preparing for the same at about 12.45 pm the accused persons came there in which Radhey Shyam was having a 315 bore countrymade pistol whereas other accused persons were armed with lathi, danda & bhala attacked them.

5. Learned counsel for the applicant argued that the present case has a cross case and there are deceased and injured persons from both the sides. It is argued that general and common role has been assigned to the applicant along with 13 other persons of assault whereas it is alleged that co-accused Radhey Shyam was armed with a countrymade pistol. It is argued that the prosecution is not truthful in as much as there is concealment and suppression of the factum of one person dying from the side of the applicant and two persons receiving injuries in the said incident. It is further argued that co-accused Pappu and Chob Singh have been granted bail by co-ordinate Benches of this Court vide orders dated 21.09.2023 and 25.09.2023 passed in Criminal Misc. Bail Application Nos. 38588 of 2023 and 30927 of 2023, the copy of the said orders have been produced before the Court which is taken on record. It is further argued that there is recovery of a lathi on the pointing out of the applicant but the same is from an open field of one Jamuna Das. The applicant has no criminal history as stated in para 39 of the affidavit and is in jail since 28.02.2023.

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

7. After having heard learned counsel for the parties and perusing the record, it is evident that the present case has a cross version also. There are deceased and injured from both the sides. Co-accused Pappu and Chob Singh have been granted bail by co-ordinate Benches of this Court.

8. 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.

9. Let the applicant- Naresh, 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.

10. 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.

11. The bail application is allowed."

13. Co-accused Kalicharan has also been enlarged on bail by this Court vide order dated 03.11.2023 passed in Criminal Misc. Bail Application No. 46833 of 2023 (Kalicharan Vs. State of U.P.). For ready reference, the same is extracted hereinunder:-

"1. Heard learned counsel for the applicant and learned A.G.A. for the State and perused the material on record.

2. By means of this application, the applicant, Kalicharan, who is involved in Case Crime No. 71 of 2023, under Sections 147, 148, 149, 307, 302, 323, 504 IPC and Section 7 Criminal Law Amendment Act, Police Station Jarif Nagar, District Budaun and is in jail since 26.02.2023 is seeking enlargement on bail during the trial.

3. It is submitted by learned counsel for the applicant that similarly placed co-accused, Dalveer, has already been enlarged on bail by this Court by order dated 13.10.2023 passed in Criminal Misc. Bail Application No. 43687 of 2023. He has further submitted that since the role of the applicant is identical to that of co-accused, Dalveer, who has already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity and for the reasons given in the order of co-accused.

4. The prayer for bail has vehemently been opposed by learned A.G.A.

5. Considering the submissions made by learned counsel for the applicant

as well as learned A.G.A., this Court is of the view that the applicant has made out a case for grant of bail on the ground of parity.

6. In view of the above, let the applicant be released on bail on his executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the court concerned with the following conditions :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) 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. is issued and the 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

7. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

8. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted."

14. Co-accused Ramgopal has also been enlarged on bail by this Court vide order dated 28.10.2023 passed in Criminal Misc. Bail Application No. 45460 of 2023 (Ramgopal Vs. State of U.P.). For ready reference, the same is reproduced hereinunder:-

"1. List revised.

2. Heard Sri Sher Bahadur Yadav, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Ramgopal, seeking enlargement on bail during trial in connection with Case Crime No. 71 of 2023, under Sections 147, 148, 149, 307, 302, 323, 504 I.P.C. and 7 Criminal Law Amendment Act, Police Station Jarifnagar, District Budaun.

4. The applicant is being prosecuted in Case Crime No. 0071 of 2023 of which a first information report was lodged by Veerpai in which Jai

Prakash, Satendra and Hari Om have died whereas the informant Veerpal and Rohtash are the injured. It is pleaded that there is a cross report of the said incident being Case Crime No. 0072 of 2023 lodged by Dalbir against 07 persons in which Resham Pal is the deceased whereas Radhey Shyam and Dalbir are the injured persons.

5. The first information report of the present matter was lodged against 15 persons including the applicant alleging therein that on 22.02.2023 he, his brother Rohtash, father Mahipal, Hari Om, Satendra, Jai Prakash had gone to the fields to put fertilizer in the wheat crop. When they were preparing for the same at about 12.45 pm the accused persons came there in which Radhey Shyam was having a 315 bore country-made pistol whereas other accused persons were armed with lathi, danda & bhala attacked them.

6. Learned counsel for the applicant argued that the present case has a cross case and there are deceased and injured persons from both the sides. It is argued that general and common role has been assigned to the applicant along with 13 other persons of assault whereas it is alleged that co-accused Radhey Shyam was armed with a country-made pistol. It is argued that the prosecution is not truthful in as much as there is concealment and suppression of the factum of one person dying from the side of the applicant and two persons receiving injuries in the said incident. It is further argued that co-accused Pappu, Chob Singh and Naresh have been granted bail by co-ordinate Benches of this Court as well as by this Court vide orders dated 21.09.2023, 25.09.2023 and 6.10.2023 passed in Criminal Misc. Bail Application Nos. 38588 of 2023, 30927 of 2023 and 42675 of 2023, the copies of the said orders are annexed as annexure No.18 to the affidavit filed in support of present bail application. While the applicant was in jail, he has been implicated in a case under the Gangsters Act. The applicant is in jail since 6.3.2023.

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

8. After having heard learned counsel for the parties and perusing the record, it is evident that the present case has a cross version also. There are deceased and injured from both the sides. Co-accused Pappu, Chob Singh and Naresh have been granted bail.

9. 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.

10. Let the applicant-Ramgopal, 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.

11. 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.

12. The bail application is allowed."

15. Co-accused Hetram has also been enlarged on bail by this Court vide order dated 03.11.2023 passed in Criminal Misc. Bail Application No. 46892 of 2023 (Hetram Vs. State of U.P.). For ready reference, the same is reproduced hereinunder:-

"By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No.71 of 2023 at Police Station-Zarif Nagar, District-Budaun under Sections 147, 148, 149, 307, 302, 323, 504 IPC and Section 7 of the Criminal Law Amendment Act. The applicant is in jail since 26.02.2023.

The bail application of the applicant was rejected by the learned trial court on 01.06.2023.

The following arguments made by Shri Sher Bahadur Yadav, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Paritosh Kumar Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:

1. The four persons namely, Satyapal, Bhurran, Reshampal and Radhey Shyam have been identified as the principal offenders in the F.I.R. who wielded weapons and discharged their firearms causing the death of the deceased persons and inflicted gun shot injuries on others.

2. The applicant has not been named as a principal offender.

3. The applicant has been assigned as a person who was wielding lathi. However, none of the deceased has suffered any lathi injury.

4. The applicant claims congruency in role and seeks parity in relief granted to the co-accused-Dalveer who has been enlarged on bail by this Court by order dated 13.10.2023 in Criminal Misc. Bail Application

No.43687 of 2023.

5. The case of the applicant is distinguishable from the other co-accused persons who have been assigned the role of firing.

6. The applicant has explained his criminal history. It is also contended that the applicant is a convenient scapegoat for the police authorities. He was falsely implicated by the police in the said cases and they have no bearing on the instant bail application.

7. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- Hetram 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 below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted."

16. On the above premise, the learned counsel for applicant, therefore, submits that the case of present applicant is similar and identical to aforementioned co-accused, who have already been enlarged on bail. There is no such distinguishing feature on the basis of which, the case of present applicant could be so distinguished from aforementioned bailed out co-accused so as to deny bail to the present applicant. He, therefore, submits that in view of above and for the facts and reasons recorded in the bail orders of aforementioned co-accused, applicant is also liable to be enlarged on bail on the ground of parity.

17. 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 24.02.2023. As such, he has undergone approximately 9 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.

18. 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 inasmuch as, the charge sheet has been submitted on 21.05.2023 against 14 of the named accused including the applicant, therefore, no indulgence be granted by this Court in favour of applicant. Learned A.G.A. further submits that proceedings under the Gangster Act have been initiated against applicant and others but subsequent to the FIR giving rise to present criminal proceedings. 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.

19. 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 in the present case, cross FIRs have been lodged from both the sides in respect of the same occurrence, as such, the occurrence is admitted to the parties, the primary issue to be decided by the Court is as to who is the aggressor, such an issue cannot be decided by this Court but by the trial after consideration of the evidence which may emerge on record, as per the material collected by the Investigating Officer up to this stage, it cannot be definitely concluded that applicant is the aggressor in the crime in question, similarly situated and circumstanced co-accused have already been enlarged on bail, the learned A.G.A. could not point out any such circumstance from the record distinguishing the case of present applicant from bailed out co-accused so as to deny bail to the present applicant, the clean antecedents of applicant, 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 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, 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.

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

21. Let the **applicant-Bhure**, 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.

22. 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 :- 24.11.2023

Vinay