

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42663 of 2023

Applicant :- Harish

Opposite Party :- State of U.P.

Counsel for Applicant :- Radhey Shyam Shukla, Vipul Shukla

Counsel for Opposite Party :- G.A., Anirudh Sharma, Neelabh Srivastava

Hon'ble Rajeev Misra, J.

1. Heard Mr. Radhey Shyam Shukla, the learned counsel for applicant, the learned A.G.A. for State and Mr. Neelabh Srivastava, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Harish, seeking his enlargement on bail in Case Crime No. 567 of 2022, under Sections 323, 325, 504, 506, 302, 307, 34 IPC, Police Station-Nigohi, District-Shahjahanpur during the pendency of trial.

4. At the very outset, the learned counsel for applicant contends that co-accused Munish has already been enlarged on bail by this Court vide order dated 28.07.2023 passed in Criminal Misc. Bail Application No. 29337 of 2023 (Munish Vs. State of U.P.). For ready reference, the order dated 28.07.2023 is reproduced hereinunder:-

"1. Heard Mr. Radhey Shyam Shukla, the learned counsel for applicant, the learned A.G.A. for State and Mr. Neelabh Srivastava, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by the applicant Furkan seeking his enlargement on bail in Case Crime No. 567 of 2022, under Sections 323, 325, 504, 506, 302, 307, 34 IPC, Police Station Nigohi, District Shahjahanpur during the pendency of the trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 22.11.2022, a prompt F.I.R. dated 22.11.2022 was lodged by first informant Harishankar and was registered as Case Crime No. 567 of 2022, under Sections 147, 148, 149, 323, 504, 506, 302 IPC, Police Station

Nigohi, District Shahjahanpur. In the aforesaid F.I.R. five persons namely (i) Mewaram, (ii) Harish, (iii) Munish, (iv) Satish and (v) Shivankal have been nominated as named accused.

5. As per the prosecution story as unfolded in the aforementioned F.I.R. one person namely Radheyshyam died whereas seven other persons sustained injury. The post-mortem report of the deceased Radheyshyam is on record at page 68 of the paper book whereas injury reports of the injured have been collectively brought on record as Annexure no. 5 to the affidavit filed in support of the present application for bail.

6. Record further shows that in respect of the same incident an application under Section 156(3) Cr.P.C. was filed by Shiv Kumar before the concerned Magistrate. The same was allowed. Resultantly, an F.I.R. dated 5.1.2023 came to be registered as Case Crime No. 0014 of 2023 under Section 147, 148, 149, 341, 323, 307 IPC, Police Station Nigohi, District Shahjahanpur. In the aforesaid F.I.R. as many as nine persons namely (i) Radheyshyam, (ii) Vipin @ Vikas, (iii) Mukesh, (iv) Sonpal, (v) Harishankar, (vi) Madhubala @ Bala, (vii) Smt. Suman, (viii) Shivam @ Shekhar, (ix) Pradeep have been nominated as named accused.

7. As per the prosecution story unfolded in the aforementioned F.I.R. four persons from the side of first informant sustained injuries. The medico-legal reports of the injured have been brought on record collectively as Annexure-16 to the affidavit filed in support of the bail application.

8. On the above premise, the learned counsel for applicant contends that since there are cross F.I.R.s regarding the same incident, therefore, the occurrence admitted to the parties. The primary question that is to be decided is as to who is the aggressor. From the material that has emerged on record up to this stage, there is nothing to indicate regarding the said issue. Even otherwise with reference to the F.I.R. giving rise to the present application for bail. he submits that deceased has died on account of gunshot injuries sustained by her. The named accused Harishankar has been assigned the role of firing. Even on that ground also the case of the present applicant is clearly distinguishable from named and charge sheeted accused Harishankar. The manner of assault in respect of the injured has not been detailed either. It is, thus, urged that applicant is liable to be enlarged on bail. 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 25.11.2022. As such he has undergone more than eight 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 no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He, therefore, 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 cooperate with the trial.

9. Per contra, the learned A.G.A. and Mr. Neelabh Srivastava, the learned counsel representing first informant have opposed the prayer for bail. They submit that on account of the act of named and charge sheeted accused

including applicant one person has died whereas several other persons have sustained serious and fatal injuries. The criminality committed by named and charge-sheeted accused including applicant is joint and common. As such the same is incapable of being separated or segregated. It is thus urged that no sympathy be shown by this Court in favour of applicant. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

10. Having heard the learned counsel for applicant, the learned A.G.A. for State, Mr. Neelabh Srivastava, the learned counsel representing first informant and upon perusal of record, evidence, accusations made, complicity of accused, nature and gravity of offence and coupled with the fact that there are cross versions of the same occurrence, as such the occurrence is admitted to the parties, injuries have been sustained by various persons from both the sides, up to this stage, no such evidence has emerged on record on the basis of which the aggressor in the crime could be defined, the case of the present applicant is clearly distinguishable from named and charge sheeted accused Harishankar inasmuch as he is the author of the fatal gun-shot injuries sustained by the deceased, in spite of the fact that the police report in terms of Section 173(2) has been submitted, the learned A.G.A. and the learned counsel representing first informant could not point out any such material from the record necessitating the custodial arrest of applicant during the pendency of trial, the judgment of the Supreme Court in Sumit Subhash Chandra Gangwal and another Vs. State of Maharashtra and another 2023 Live Law SC 373(5), the clean antecedents of applicant, the period of incarceration undergone by the applicant, but without making any comments on the merits of the case the applicant has made out a case for bail.

11. Accordingly, the bail application is allowed.

12. Let the applicant Munish involved in Case Crime No. 567 of 2022, under Sections 323, 325, 504, 506, 302, 307, 34 IPC, Police Station Nigohi, District Shahjahanpur be released on bail on his furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

i. The applicant will not tamper with the evidence during the trial.

ii. The applicant will not pressurize/ intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

ix. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

x. The applicant shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.

13. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 28.7.2023"

5. Similarly, another co-accused Satish Kumar has already been enlarged on bail vide order dated 17.08.2023 passed in Criminal Misc. Bail Application No. 34677 of 2023 (Satish Kumar Vs. State of U.P.). For ready reference, the order dated 17.08.2023 is extracted hereinunder:-

"1. वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र आवेदक सतीश से मु०अ०स० 567/2022, अन्तर्गत धारा 323, 325, 504, 506, 302, कुमार की ओर 307, 34 भा०द०वि० एवं धारा 25/27 आर्म्स एक्ट, थाना निगोही, जिला शाहजहांपुर में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

2.परिवादी के विद्वान अधिवक्ता द्वारा वकालतनामा दाखिल किया गया, इसे पत्रावली पर रखा जाय ।

3. आवेदक के विद्वान अधिवक्ता, परिवादी के विद्वान अधिवक्ता श्री नीलाभ श्रीवास्तव एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

4. आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि आवेदक को इस प्रकरण में गलत एवं फर्जी ढंग से झूठा फंसाया गया है, उसने कथित अपराध कारित नहीं किया है। प्रथम सूचना रिपोर्ट विलंबित है, जिसका कोई समुचित स्पष्टीकरण नहीं दिया गया है। कथित मामले में आवेदक की विशिष्ट भूमिका उल्लेखित नहीं है, अपितु केवल सामान्य रोल उल्लेखित किया गया है। कथित घटना के प्रत्यक्षदर्शी साक्षियों के बयान से कथित अपराध कारित करने में मुख्य सहअभियुक्त हरीश को भूमिका परिलक्षित हो रही है। आवेदक को गांव की पार्टीबंदी के कारण रंजिशन इस मामले में नामित किया गया है। उनका यह भी कथन है कि मामले के सहअभियुक्त मुनीष की जमानत, जमानत आवेदन पत्र सं० 29337/2023 में इस न्यायालय के अन्य न्यायपीठ के आदेश दि० 28.07.2023 के द्वारा स्वीकार की जा चुकी है। आवेदक निर्दोष है तथा वह इस प्रकरण में दि० 22.11.2022 से कारागार में निरुद्ध है। इसलिए आवेदक को जमानत पर छोड़ दिया जाय।

5. परिवादी के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता ने आवेदक के जमानत का प्रबल विरोध करते हुए तर्क प्रस्तुत किया कि आवेदक द्वारा कारित अपराध संज्ञेय एवं गंभीर प्रकृति का है, इसलिए आवेदक को जमानत पर न छोड़ा जाय।

6.आवेदक के विद्वान अधिवक्ता के तर्कों के परिप्रेक्ष्य में पत्रावली पर उपलब्ध सारवान तथ्यों एवं परिस्थितियों का समग्र रूप से अवलोकन करने के बाद, सबूतों की प्रकृति और किसी भी ठोस विरोधात्मक सामग्री की अनुपस्थिति एवं उपलब्ध सामग्री से छेड़छाड़ की संभावना न होने के तथ्य को देखते हुए मेरी राय में आवेदक को जमानत पर मुक्त करने का उपयुक्त आधार है।

7. अतः वाद के गुण-दोष पर बिना कोई टिप्पणी किए हुए आवेदक को उपरोक्त वर्णित अपराध में संबंधित न्यायालय की संतुष्टि पर व्यक्तिगत बंध-पत्र एवं अधिक धनराशि के दो स्थानीय प्रतिभू प्रस्तुत करने पर निम्नलिखित शर्तों के साथ जमानत पर छोड़ दिया जाय।

1. आवेदक विवेचना या परीक्षण के दौरान अभियोजन साक्ष्यों के साथ छेड़छाड़ नहीं करेगा।

2. आवेदक अभियोजन साक्षियों व पीड़िता/ शिकायतकर्ता को डरायेगा/धमकायेगा नहीं।

3. आवेदक न्यायालय के आदेशों का पालन करेगा, वह परीक्षण के दौरान बिना कोई अनावश्यक स्थगन लिए नियत तिथि पर न्यायालय में उपस्थित होगा तथा परीक्षण में ईमानदारी से सहयोग करेगा।

4. आवेदक जमानत पर रिहा होने के बाद जमानत की स्वतंत्रता का दुरुपयोग नहीं करेगा और किसी भी अपराधिक गतिविधि में लिप्त नहीं होगा न कोई अपराधिक कृत्य करेगा।

5. आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से मामले के तथ्यों से परिचित किसी भी व्यक्ति या पुलिस अधिकारियों को कोई प्रलोभन या धमकी नहीं देगा न ही उनसे कोई वायदा करेगा, जिसके कारण उन्हें न्यायालय में तथ्यों को उजागर करने से विरत रहना पड़े।

उपरोक्त शर्तों में से किसी के उल्लंघन के मामले में, परीक्षण न्यायालय आवेदक की जमानत नियमानुसार रद्द करने को स्वतंत्र है।"

6. On the above premise, the learned counsel for applicant contends that the case of present applicants is similar and identical to aforementioned co-accused Munish and Satish Kumar, who have already been enlarged on bail. There is no such distinguishing feature on the basis of which, the case of present applicants could be so distinguished from aforementioned co-accused so as to deny him bail. 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.

7. 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 22.11.2022. As such, he has undergone more than 11 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 the 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.

8. Per contra, the learned A.G.A. and the learned counsel representing first informant have opposed the prayer 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, the learned A.G.A. and the learned counsel representing first informant could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

9. 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 there are cross versions of the same occurrence, as such the occurrence is admitted to the parties, injuries have been sustained by various persons from both the sides, up to this stage, no such evidence has emerged on record on the basis of which the aggressor in the crime could be defined, the case of the present applicant is clearly distinguishable from named and charge sheeted accused Harishankar inasmuch as he is the author of the fatal gun-shot injuries sustained by the deceased, the case of present applicants is similar and identical to co-accused Munish and Satish Kumar, who have already been enlarged on bail, there is no such distinguishing feature on the basis of which, the case of present applicants could be so distinguished from aforementioned co-accused so as to deny him bail, the police report in terms of Section 173(2) has been submitted, yet in spite of above, the learned A.G.A. and the learned counsel representing first informant could not point out any such material 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. and the learned counsel representing first informant 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.

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

11. Let the **applicant-Harish**, 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.

12. 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 :- 2.11.2023

Vinay