

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42278 of 2023

Applicant :- Dr Narvesh

Opposite Party :- State Of Up Thru Its Secretary Home U.P. Govt

Counsel for Applicant :- Manish Kumar Kashyap, V.P. Singh Kashyap

Counsel for Opposite Party :- G.A., Surya Nath Bhatt

Hon'ble Rajeev Misra, J.

Heard Mr. V.P. Singh Kashyap, the learned counsel for applicant, the learned A.G.A. for State and Mr. Surya Nath Bhatt, the learned counsel representing first informant.

This application for bail has been filed by applicant Dr. Narvesh seeking his enlargement on bail in Case Crime No.43 of 2022 under Sections 302, 201, 376-D IPC, police station Sunngarhi, district Kasganj, during the pendency of trial.

Perused the record.

Order-sheet shows that time was granted by this Court to the learned A.G.A. to obtain the DNA profile report of skeleton of the deceased vide order dated 30.10.2023. For ready reference, the order dated 30.10.2023 is reproduced herein-under :-

"1. As prayed by the learned A.G.A., put up again as fresh on 06.11.2023.

2. By the next date, the learned A.G.A. shall obtain specific instructions as to whether any DNA profile report of the skeleton of the deceased has been submitted or not."

Subsequently, further time was granted to the learned A.G.A. to obtain the said DNA profile report vide order dated 17.11.2023. For ready reference, the order dated 17.11.2023 is extracted herein-under :-

"1. On the matter being taken up, the learned A.G.A. submits that the order dated 30.10.2023 passed by this Court has not been complied with.

2. In view of above, the hearing of present application for bail is adjourned.

3. Matter shall re-appear as fresh on 01.12.2023.

4. Learned A.G.A. shall ensure that the earlier order dated 30.10.2023 is positively complied with before the next date fixed."

On the matter being taken up, the learned A.G.A. contends that the requisite DNA profile report has been received by him.

At the very outset, the learned counsel for applicant contends that co-accused Dhanvir has already been enlarged on bail by this Court vide order dated 20.03.2023 passed in Criminal Misc. Bail Application No.31902 of 2022 (Dhanvir Vs. State of U.P.). For ready reference, the same is reproduced hereunder :-

"1. Heard Mr. Mohd. Afzal, the learned counsel for applicant, the learned A.G.A. for State and Mr. Surya Nath Bhatt, the learned counsel representing first informant-opposite party 2.

2. Perused the record.

3. This application for bail has been filed by applicant-Dhanvir seeking his enlargement on bail in Case Crime No. 43 of 2022, under Sections 376D, 302, 201 IPC, Police Station-Sunngarhi, District-Kasganj, during the pendency of trial.

4. Learned counsel for applicant submits that applicant is innocent. He has been falsely implicated in aforementioned case crime number. Allegations made in the FIR are false and concocted. As such, applicant is being falsely prosecuted in aforementioned case crime number.

5. Present case is a case of circumstantial evidence as such there is no eye witness of the occurrence. Referring to paragraph 152 of the judgment of the Supreme Court in Sharad Birdhichand Sarda Vs. State of Maharashtra 1984 AIR 1622, he submits that none of the parameters laid down by the Apex Court in aforementioned case are satisfied against applicant up to this stage.

6. It is then contended by the learned counsel for applicant that co-accused Dr. Narvesh was arrested by the police in another case crime number. While he was in custody, he confessed about the crime in question. However, the name of applicant has surfaced in the statement of co-accused Dr. Narvesh. Applicant-Dhanvir was accordingly arrested.

7. The only evidence that has emerged against applicant is the statement of co-accused Dr. Narvesh and that on the joint pointing of the applicant and co-accused, Dr. Narvesh, an skeleton was recovered which is said to be that of deceased-Poonam.

8. However, the said recovery/discovery cannot be said to have been made on the joint pointing of applicant-Dhanvir and co-accused, Dr. Narvesh as there can be no joint discovery/recovery by reason of Section 27 of the Evidence Act. However, up to this stage, there is nothing on record to established that the skeleton so recovered was that of deceased-Poonam.

9. It is further submitted by the learned counsel for applicant that applicant has criminal history which has been sufficiently explained. Applicant is in jail since 19.05.2022. As such, he has undergone 10 months of incarceration. In case, applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. has opposed the present application for bail. However, he could not dislodge the factual/legal submissions urged by the learned counsel for applicant at this stage.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State and upon perusal of material brought on record as well as the complicity of applicant and accusation made coupled with the fact that in spite of time having been granted to the learned A.G.A., the D.N.A. report has not yet been

submitted, the discovery/recovery being joint discovery/recovery, there being nothing on record to identify that the skeleton so recovered was that of the deceased-Poonam, applicant has made out a case for bail.

12. Accordingly, the bail application is Allowed.

13. Let the applicant-Dhanvir, 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.

14. However, it is made clear that any willful 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."

On the above premise, it is urged by the learned counsel for applicant that the case of the present applicant is similar and identical to that of co-accused Dhanvir. There is no such distinguishing feature in the case of present applicant so as to distinguish the case of present applicant from aforementioned bailed out 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 order of co-accused Dhanvir, the applicant is also entitled to be enlarged on bail on the ground

of parity.

Learned counsel for applicant submits that though the applicant has criminal history of nine cases but the same has been sufficiently explained in paragraph 22 of the affidavit filed in support of the bail application. Applicant is in custody since 18.05.2022. As such, he has undergone more than one year and five months of incarceration. The police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted against the applicant, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus contended 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.

Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed the prayer for bail. Learned A.G.A. submits that since the applicant is a charge-sheeted accused therefore, he does not deserve any indulgence by this court. Learned A.G.A. however submits that as per the FSL report dated 29.11.2023, the DNA profile of skeleton so recovered does not tally with the parents of the deceased Poonam. As such, the FSL report categorically goes to show that the recovered skeleton is not that of deceased Poonam. However, they could not dislodge the other factual and legal submissions urged by the 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, the learned counsel representing first informant, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made coupled with the fact that present case is a case of circumstantial evidence therefore, there is no eye-witness of the occurrence, complicity of an accused in a case based upon circumstantial evidence is to be inferred in the light of parameters laid down in **Sharad Birdhichand Sarda Vs. State of Maharashtra AIR 1984 SC 1622**, up this stage none of the parameters laid down in aforementioned judgement is prima facie satisfied against the applicant, applicant is not named in the FIR, the applicant is charge-sheeted accused, the only incriminating circumstance that has emerged against the applicant and other co-accused is that the skeleton of the deceased (Poonam) was recovered on the pointing of charge-sheeted co-accused Dhanvir and the present applicant, as per the FSL report the skeleton so recovered is not the skeleton of deceased Poonam, the criminal history of the applicant has been sufficiently

explained, in view of the law laid down by the three Judges' Bench judgement of the Supreme Court in **Brijmani Devi Vs. Pappu Kumar and Another (2022) 4 SCC 497** an accused cannot be denied bail simply on the ground of criminal history, in spite of the fact that the charge-sheet has been submitted against applicant and therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet the learned A.G.A. nor the learned counsel for first informant could point out any such incriminating circumstance from the record necessitating the custodial arrest of the applicant during the pendency of trial, the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to the present application for bail but, without making any comments on the merit of the case, the applicant has made out a case for bail.

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

Let the applicant **Dr. Narvesh**, involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with 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 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C.

(iii) 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.

(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 him 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 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 :- 1.12.2023.

Rks.