

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42551 of 2023

Applicant :- Ram Khiladi

Opposite Party :- State of U.P.

Counsel for Applicant :- Kartikeya Shukla, Mahesh Prasad Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Kartikeya Shukla, the learned counsel for applicant, the learned A.G.A. for State and Mr. Jeet Bahadur Singh, the learned counsel representing first informant, who has put in appearance by filing his Vakalatnama in Court today which is taken on record.

Supplementary affidavit filed by the learned counsel for applicant in Court today is taken on record.

This application for bail has been filed by applicant-Ram Khiladi seeking his enlargement on bail in Case Crime No.701 of 2017, under Sections 302, 201 IPC, Police Station Gunnaur, District Bhim Nagar (Sambhal), during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 21.09.2017, a delayed first information report dated 03.10.2017 was lodged by first informant, namely, Dinesh Kumar (father of the deceased), which was registered as Case Crime No.0701 of 2017, under Sections 363, 366 IPC, Police Station Gunnaur, District Bhim Nagar (Sambhal). In the aforesaid F.I.R., four persons, namely, Ram Khiladi (applicant herein); Mannu Singh; Ranvir and Sushila have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused on 21.09.2017 at about 2.45 a.m. enticed away the daughter of the first informant, namely, Vandana, who is a student of Class-XII.

After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. During course of investigation, Investigating Officer examined the first informant, namely, Dinesh Kumar (father of the deceased) and other witnesses, namely, Satyapal and Kitab Singh and recorded their statements under Section 161 CrPC. It is important to mention here that the dead body of the deceased was not recovered and therefore neither the inquest nor the post-mortem of the body of deceased could be conducted. Since no offending material emerged against applicant establishing his complicity in the crime in question,

applicant was enlarged on bail by this Court vide order dated 24.07.2018 passed in Criminal Misc. Bail Application No.7858 of 2018 (Ram Khiladi Vs. State of U.P.). For ready reference, the order dated 24.07.2018 is reproduced herein-under :-

"Heard learned counsel for the applicant and learned A.G.A. appearing for the State.

Learned counsel for the applicant submitted that the first information report was lodged after an inordinate and unexplained delay of twelve days. The implication of the applicant is based only upon suspicion and last seen evidence of uncle of the prosecutrix Vandan, which is totally untrustworthy. He next submitted that the applicant is absolutely innocent and has been falsely implicated in the present case due to some ulterior motive. He lastly submitted that the applicant has no criminal history. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the court. The circumstances which, according to the counsel, led to the false implication of the accused has also been touched upon at length. It has 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. It has also been submitted that the applicant is languishing in jail since 14.11.2017.

Learned A.G.A. opposed the prayer for bail.

Considering the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witnesses and prima facie satisfaction of the Court in support of the charge, the applicant is entitled to be released on bail in this case.

Without expressing any opinion on the merits of the case, let the applicant Ram Khiladi involved in Case Crime No. 701 of 2017, under Section 366 I.P.C., P.S. Gunnaur, district-Sambhal 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.

1. The applicant will continue to attend and co-operate in the trial pending before the court concerned on the date fixed after release.
2. He will not tamper with the witnesses.
3. He will not indulge in any illegal activities during the bail period.

It is further directed that the identity, status and residence proof of the sureties be verified by the authorities concerned before they are accepted.

In case of breach of any of the above conditions, the trial court will be at liberty to cancel the bail."

It is apposite to mention here that prior to the applicant being enlarged on bail, a charge-sheet dated 08.01.2018 was already submitted against the applicant whereby applicant was charge-sheeted under Section 366 IPC. However, the said charge-sheet contains a categorical recital by the Investigating Officer that the investigation is still pending against applicant.

After the applicant was enlarged on bail vide order dated 24.07.2018 as noted above, a confessional statement is alleged to have been made by applicant before one of the witness, namely, Mahesh. Upon the disclosure made by the said witness Mahesh to the Investigating Officer, applicant was re-summoned by the Investigating Officer. It is the case of the prosecution that from the person of applicant and on the pointing out of the applicant certain recoveries were made on 25.08.2018. Two mobile phones belonging to the applicant in which one was being used by the prosecutrix and some bones of skeleton of deceased are alleged to have been recovered. However, it is much more interesting and important to note here that as per the DNA test, the recovered bones matched with the DNA profile of the parents of the deceased. On the above premise, applicant was again arrested on 24.06.2023. Thereafter, Investigating Officer submitted supplementary charge-sheet dated 01.07.2023, whereby applicant has been charge-sheeted under Sections 302 and 201 IPC.

Learned counsel for the applicant contends that though applicant is a named/charge-sheeted accused yet he is liable to be enlarged on bail. The present case is a case of circumstantial evidence and, therefore, there is no eye-witness of the occurrence. According to the learned counsel for applicant, the complicity of an accused in a case based on circumstantial evidence is to be judged in the light of parameters laid down by the Supreme Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra AIR 1984 SC 1622**. However, in the present case none of the parameters laid down in the aforementioned judgement are satisfied against the present applicant up to this stage. The applicant was already enlarged on bail by this Court vide order dated 24.07.2018. After the applicant had been enlarged on bail, a confessional statement is alleged to have been made by the applicant before one of the witness examined under Section 161 CrPC, namely, Mahesh. It is only after the said disclosure was made by the applicant before the said witness, the applicant was re-summoned by the Investigating Officer and the recovery of material referred to above is alleged to have been made on the pointing out and from the person of applicant on 25.08.2018.

Learned counsel for the applicant submits that as per the DNA test of the said recovered bones matched with the DNA profile of parents of the deceased. He, however, submits that aforesaid circumstance by itself not such an incriminating circumstance so as to infer the guilt of an accused. Referring to the provisions of Section 27 of Indian Evidence Act, learned counsel for applicant contends that (i) applicant was not in custody; (b) no disclosure was made by the accused-applicant to the Investigating Officer and (c) no recovery was made by

the Investigating Officer on the basis of the said confession/disclosure made by applicant to the Investigating Officer therefore, the said recovery is not itself a recovery in terms of Section 27 of the Evidence Act and, therefore, cannot be relied upon against applicant.

According to the learned counsel for applicant, the complicity of applicant in the crime in question is said to be established simply on the basis of extra-judicial confession alleged to have been made by the applicant to one of the witness examined under Section 161 CrPC, namely, Mahesh. The credibility of said confession has been discarded by the learned counsel for applicant in the facts and circumstances of the case as noted above. On the cumulative strength of above, he submits that up to this stage no such cogent material has emerged against applicant so as to infer the complicity of applicant in the crime in question. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in jail since 24.06.2023. As such, he has undergone more than three and half months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. Up to this stage, no such circumstance has emerged necessitating the custodial arrest of the 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 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. They submit that since the applicant is a named/charge-sheeted accused, therefore, no indulgence be granted by this Court in his favour. The recovery has been made on the pointing out and from the person of the applicant. The applicant is alleged to have two mobile phones out of which one was being used by the deceased, the CDR report of both the mobile phones clearly support the prosecution story i.e. the deceased and the applicant were in consistent conversation with each other. With regard to recovery of bones pertaining to the skeleton of the deceased, the learned A.G.A. submits that bones of skeleton was recovered as per confession made by the applicant himself to one witness, namely, Mahesh therefore, there is no reason to doubt the said recovery. The deceased was a young girl aged about 18 years who has been put to death. The learned A.G.A. further submits that since complicity of the applicant stands established in the crime in question therefore, he does not deserve any sympathy of this Court. 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.

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, evidence, complicity of the accused, accusation made, nature and gravity of offence and coupled with the fact that though applicant is a named as well as charge-sheeted accused, inasmuch as, the charge-sheet was submitted against the applicant on 08.01.2018 whereby applicant was charge-sheeted under Section 366 IPC, though charge-sheet was submitted but there was a recital in the charge-sheet that investigation is still going on against the applicant in respect of other offences but, subsequently, the applicant was enlarged on bail by this Court vide order dated 24.07.2018, after the applicant was enlarged on bail it is alleged that he has made a confession to one of the witness, namely, Mahesh that he committed the crime in question, subsequently upon disclosure of the said confession, made by the witness Mahesh to Investigating Officer, applicant was summoned by the Investigating Officer, from the person and on the pointing out of the applicant two mobile phones and bones of skeleton were recovered, the CDR report clearly establishes that mobile phone owned by the applicant was being used by the deceased and both were in conversation with each other, however in the submission of learned counsel for applicant the aforesaid circumstance by itself is not so strong and incriminating so as to infer the guilt of applicant in the crime in question, the recovery has not been made while the applicant was not in custody and it was only upon the alleged disclosure made by him to the witness Mahesh who in turn disclosed to the Investigating Officer and therefore on the pointing of applicant the recovery of bones was made therefore the same is bad by virtue of the provisions contained in Section 27 of the Indian Evidence Act, the disclosure alleged to have been made by the applicant to the witness Mahesh by itself is not reliable in the facts and circumstance of the case, considering the fact that since charge-sheet has already been submitted 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 judgement of Supreme Court in **Sumit Subhashchandra Gangwal and Another Vs. State of Maharashtra and Another 2023 LiveLaw (SC) 373 (paragraph 5)**, 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 merits of the case, the applicant has made

out a case for bail.

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

Let the applicant **Ram Khiladi**, 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 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 :- 16.10.2023.

Rks.