

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42528 of 2023

Applicant :- Aman Alias Babban

Opposite Party :- State of U.P.

Counsel for Applicant :- Kuldeep Singh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

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

Heard Mr. Kuldeep Singh Yadav, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant-Aman Alias Babban seeking his enlargement on bail in Case Crime No.372 of 2021, under Sections 302, 115, 120-B IPC, Police Station Sirsaganj, District Firozabad, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 27.06.2021, a prompt F.I.R. dated 27.06.2021 was lodged by first informant, namely, Diwakar Singh (father of the deceased) and was registered as Case Crime No.0372 of 2021, under Section 302 IPC, Police Station Sirsaganj, District Firozabad. In the aforesaid F.I.R., one unknown person has been arraigned as an accused.

The gravamen of the allegations made in the first information report is to the effect that on 27.06.2021 at around 4.30 a.m., as usual, the son of the first informant, namely, Pawan Kumar went on his motorcycle to the Navin Mandi, Sirsaganj. However, two unknown persons came on motorcycle. One of the riders of the motorcycle fired a gunshot at the son of the deceased on account of which he sustained gunshot injury on his chest. The FIR further records that the victim was taken to the hospital but he succumbed to the gunshot injuries on the way.

After aforesaid first information report was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. The inquest (Panchayatnama) of the body of deceased was conducted. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as homicidal and the cause of death of the deceased was specified as gunshot injury sustained by the deceased.

Thereafter, the post mortem of body of the deceased was conducted. In the opinion of the autopsy surgeon, who conducted autopsy of body of the deceased, the cause of death of deceased was shock and hemorrhage as a result of ante-mortem injuries (gunshot). The Doctor, who conducted autopsy of body of the deceased, found following ante-mortem injuries on the body of the deceased, which is explicit from the recital contained at page 30 of the paper book :-

"1. Entry wound of firearm injury 1 cm in diameter, oval in shape on Rt. latero posterior surface of thorax, 18 cm posterior lateral from Rt. nipple & 15 cm below from Rt. shoulder tip.

Abrasion collar present on posterior side of wound. Margins are inverted.

Tattooing present around entry wound 15 cm in diameter.

Exit wound of firearm injury of 1.5 cm, in diameter on antero lateral surface of chest, 4 cm below & lateral from Lt. nipple, Margins are everted. No blackening & tattooing present.

Injury No.(1) is connected through & through with injury No.(2).

No bullet found in the body."

During the course of investigation, Investigating Officer examined first informant and other witnesses, namely, Sonal; Sanjay Singh; Sunil Kumar; Diwakar Singh; Arvind Kumar and Brijesh Kumar under Section 161 CrPC. The witnesses so examined have supported the FIR. On the basis of above and other material collected by the Investigating Officer during the course of investigation, he came to the conclusion that the complicity of accused Sukhveer, Yagvendra, Aman, Rajiv Kumar, Indrajeet and Yogesh Yadav is fully established in the crime in question. He, accordingly, submitted the charge-sheets dated 06.10.2021 and 28.06.2022 respectively under Sections 302, 115 and 120-B IPC against the aforementioned accused.

Learned counsel for the applicant submits that the applicant is innocent. Applicant is not named in the FIR but a charge-sheeted accused, inasmuch as, charge-sheet has been submitted against the applicant and five other accused on 06.10.2021 and 28.06.2022 respectively, yet the applicant is liable to be enlarged on bail. He further submits that following charge-sheeted co-accused have already been enlarged on bail by this Court. The details of their bail orders are as follows :-

Co-accused Yagvendra has been enlarged on bail by this Court vide order dated 23.11.2021 passed in Criminal Misc. Bail Application No.41712 of 2021 (Yagvendra Vs. State of U.P.); co-accused Yogesh Yadav has been enlarged on bail by this Court vide order dated 04.07.2022 passed in Criminal

Misc. Bail Application No.22480 of 2022 (Yogesh Yadav Vs. State of U.P.); co-accused Indrajeet @ Jhandu has been enlarged on bail by this Court vide order dated 11.07.2022 passed in Criminal Misc. Bail Application Nos.25093 of 2022 (Indrajeet @ Jhandu Vs. State of U.P.); Rajiv Kumar has been enlarged on bail by this Court vide order dated 13.09.2022 passed in Criminal Misc. Bail Application No.31775 of 2022 (Rajiv Kumar Vs. State of U.P.) and co-accused Sukhvir alias Sukhaiya alias Shyam Lal has been enlarged on bail by this Court vide order dated 27.04.2023 passed in Criminal Misc. Bail Application No.18926 of 2023 (Sukhvir alias Sukhaiya alias Shyam Lal Vs. State of U.P.), respectively.

With reference to the aforesaid orders of co-accused, the learned counsel for applicant contends that the case of the present applicant is similar and identical to aforementioned co-accused. There is no such distinguishing feature on the basis of which the case of the present applicant can be so distinguished from aforementioned charge-sheeted but bailed out co-accused so as to deny bail to the applicant. He, therefore, contends that in view of above and for the facts and reasons recorded in the bail orders of co-accused, referred to above, the present applicant is also liable to be enlarged on bail on the ground of parity.

Learned counsel for applicant next contends that 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 inferred 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 aforementioned judgement is satisfied against the present applicant up to this stage. Neither any recovery has been made from the person of applicant nor on the pointing out of applicant. There is no evidence of last seen against the applicant either. No motive has emerged against for committing the crime in question. Since there is no previous enmity in between the applicant and the deceased, no animus can be gathered against the applicant for committing the crime in question. Referring to the judgement of the Supreme Court in **Nandu Singh Vs. State of M.P. 2022-SCC On-Line SC 1454**, the learned counsel for applicant submits that motive plays an important role in a case based on circumstantial evidence to complete the chain of circumstances. As no motive has emerged against the applicant, the prosecution of the applicant prima facie cannot be maintained.

Even otherwise, the applicant is a man of clean antecedents having no criminal history to his credit except the present

one. Applicant is in jail since 29.06.2022. As such, he has undergone more than one year and four months of incarceration. The police report in terms of 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. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. It is thus urged that the 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. has opposed the prayer for bail. He submits that since the applicant is a charge-sheeted accused therefore he does not deserve any indulgence by this Court. However, he 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, 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 the present case is a case of circumstantial evidence therefore there is no eye-witness of the occurrence, an inference of guilt of an accused in a case based on circumstantial evidence can be drawn only in accordance with the parameters laid down by the Supreme Court in **Sharad Birdhichand Sarda (supra)**, up to this stage none of the parameters laid down in the aforementioned judgement is satisfied against the applicant, there is no evidence of last seen against the applicant, no recovery has been made from the applicant either, no motive has emerged against applicant for committing the crime in question, since there is no previous enmity in between the applicant and the deceased no animus can be gathered against the applicant for committing the crime in question, as per the law laid down in **Nandu Singh (Supra)** in a case based on circumstantial evidence, motive plays an important role to complete the chain of circumstances, the applicant is not named in the FIR, though the applicant is a charge-sheeted accused along with five other co-accused but the Court finds that all the charge-sheeted co-accused except the present applicant have already been enlarged on bail by this Court, photocopy of the bail orders of the charge-sheeted co-accused who have been enlarged on bail have been brought on record of this application for bail, the learned A.G.A. could not point out any such circumstance from the record distinguishing the case of the present applicant from bailed out charge-sheeted co-accused so as to deny bail to the present applicant, the clean antecedents of the applicant, the period of incarceration undergone, the police report under Section 173 (2) CrPC has

already been submitted, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, in spite of above yet the learned A.G.A. could not point out from the record any such circumstance necessitating the custodial arrest of the applicant during the pendency of trial, therefore irrespective of the objections raised by the learned A.G.A. but, without making any comments on the merit of the case, the applicant has made out a case for bail on the ground of parity.

Accordingly, the bail application is allowed.

Let the applicant **Aman Alias Babban**, 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 :- 24.11.2023.

Rks.