

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42744 of 2023

Applicant :- Vidyasagar

Opposite Party :- State of U.P.

Counsel for Applicant :- Hari Keshav

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. I.K. Chaturvedi, the learned Senior Counsel assisted by Mr. Hari Keshav, 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-Vidyasagar, seeking his enlargement on bail in Case Crime No. 183 of 1984, under Sections 328, 302, 201, 498A IPC, Police Station-Mawana, District-Meerut during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 22.05.1984, a delayed FIR dated 01.06.1984 was lodged by first informant-Mandardas (brother of the deceased) and was registered as Case Crime No. 183 of 1984, under Sections 328, 302, 201 IPC, Police Station-Mawana, District-Meerut. In the aforesaid FIR, 6 persons namely - (1) Vidyasagar (applicant herein), (2) Ramnath, (3) Somindi Devi (4) Sohan Lal, (5) Satyendra Kumar and (6) Alka Devi have been nominated as named accused.

5. Upon completion of investigation of aforementioned case crime number, Investigating Officer submitted the charge sheet dated 19.08.1984 whereby all the named accused have been charge sheeted under Section 328, 302, 201, 498A IPC.

6. Mr. I.K. Chaturvedi, the learned Senior Counsel for applicant submits that marriage of applicant was solemnized with the deceased on 07.05.1982. The occurrence giving rise to the present criminal proceedings occurred on 27.05.1984. However, in the interregnum, out of the aforesaid wedlock, two children were born. However, after the submission of aforementioned charge sheet

giving rise to present criminal proceedings, the same was challenged before this Court by means of Criminal Misc. Application No. 9647 of 1984. In the aforesaid Misc. Application, an interim order dated 14.11.1984 was passed. However, placing reliance upon the judgment of the Supreme Court in ***Asian Resurfacing of Road Agency Pvt. Ltd Vs. C.B.I., 2020 SCC OnLine SC 1046***, court below took the view that since a period of more than 6 months has expired from the date of interim order and there being no subsequent order to the effect that the interim order stand extended, court below issued non bailable warrant against the applicant. As such, the applicant was taken into custody.

7. According to the learned Senior Counsel for applicant, on date, the applicant is an old man aged about 65 years. A categorical averment to that effect has been made in paragraph 31 of the affidavit filed in support of the bail application. With reference to the provisions contained in proviso to Section 437 Cr.P.C., the learned Senior Counsel contends that since applicant is an old man, therefore, he is liable to be enlarged on bail. It is then submitted by the learned Senior Counsel for applicant that after the death of the deceased due information was given to her parent and they were all present at the time of cremation of dead body of deceased. To buttress his submission, he has invited the attention of the Court to the statement of Madan Jain (brother-in-law of the first informant) and Darshan Lal (father-in-law of the first informant). According to the learned Senior Counsel for applicant, the deceased died on account of electrocution and not on account of any deliberate act of applicant.

8. 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 08.08.2023. As such, he has undergone more than 2 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.

9. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is the husband of the deceased, a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. 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.

10. 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 the occurrence giving rise to present criminal proceedings occurred on 27.05.1984, after the submission of the charge sheet, the entire proceedings arising out of the charge sheet so submitted against applicant and other accused were stayed by the Court vide interim order dated 14.11.1984 passed in Criminal Misc. Application No. 9647 of 1984, on account of order passed by the Supreme Court in ***Asian Resurfacing of Road Agency Pvt. Ltd (Supra)***, the court below contended that since a period of more than 6 months has rolled by from the date of interim order, therefore, the same is no longer in force, resultantly, non bailable warrant was issued against applicant, the applicant was taken into custody on 08.08.2023, the applicant is now an old man aged about 65 years, which fact has been categorically pleaded in paragraph 31 of the affidavit filed in support of bail application but has not been denied by the learned A.G.A., the death of the deceased is on account of electrocution and not on account of any deliberate act of the applicant, as is evident from the statements of the two of the witnesses examined under Section 161 Cr.P.C. namely Madan Jain and Darshan Lal as well as the two Doctors namely Dr. Manvendra Sharma and Dr. A.K. Gupta, 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 comments on the merits of the case, applicant has made out a case for bail.

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

12. Let the applicant-Vidyasagar, 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.

13. 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

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