

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42753 of 2023

Applicant :- Arjun

Opposite Party :- State of U.P.

Counsel for Applicant :- Arun Kumar Tripathi

Counsel for Opposite Party :- G.A., Akhil Kumar Shukla

Hon'ble Rajeev Misra, J.

1. Heard Mr. Arun Kumar Tripathi, the learned counsel for applicant, the learned A.G.A. for State and Mr. Akhil Kumar Shukla, the learned counsel representing first informant.
2. Supplementary affidavit filed by the learned counsel for applicant in Court today, is taken on record.
3. Perused the record.
4. This application for bail has been filed by applicant-Arjun, seeking his enlargement on bail in Case Crime No. 327 of 2023, under Sections 147, 148, 149, 323, 302 IPC, Police Station-Kayamganj, District-Farrukhabad during the pendency of trial.
5. Record shows that in respect of an incident, which is alleged to have occurred on 02.07.2023, a delayed FIR dated 03.07.2023 was lodged by first informant-Sanjeev (grandson of the deceased) and was registered as Case Crime No. 327 of 2023, under Sections 147, 323, 307 IPC, Police Station-Kayamganj, District-Farrukhabad. In the aforesaid FIR, 5 persons namely - (1) Shivraj, (2) Rohit, (3) Arjun, (4) Jabar Singh and (5) Karan have been nominated as named accused.
6. The gravamen of the allegations made in the FIR is to the effect that named accused formed an unlawful assembly and thereafter assaulted Jadunath (grandfather of the first informant) and others on account of which, the grandfather and the nephew of first informant sustained injuries.
7. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. Unfortunately, one of the injured namely Jadunath ultimately succumbed to the injury sustained by him on 03.07.2023. Accordingly, the case was converted under Section 302 IPC.
8. According to the learned A.G.A., the inquest (*Panchayatnama*)

of the body of deceased was thereafter conducted. In the opinion of the witnesses of inquest (*Panch witnesses*), the nature of the death of deceased was categorized as homicidal and the cause of death of deceased was specified as injuries inflicted upon the deceased by Lathi, Danda and Shovel (Fawda). Thereafter, the post mortem of the body of deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the body of deceased, opined that the cause of death of deceased was Shock and Hemorrhage as a result of head injury. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. Stitched wound 11 cm average 12 stitched in sewing on the the head 2 cm left to mid line on dissection left parital bone is cutted meanings and brain lacerated Hambones present in sitin....

2. Abrasion on front of both knee measuring 2.5 cm x 1 cm and 1.5 cm x 1.0 cm respectively on left and right knee."

9. During course of investigation, Investigating Officer examined first informant-Sanjeev and the following witnesses namely - (1) Smt. Rekha, (2) Badan Singh and (3) Shivam under Section 161 Cr.P.C. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of only 4 of the named accused i.e. (1) Shivraj, (2) Rohit, (3) Jabar Singh and (4) Arjun (applicant herein) is established in the crime in question. He, accordingly, submitted the charge sheet dated 29.09.2023 whereby aforementioned named accused have been charge sheeted under Sections 147, 148, 149, 323, 302 IPC. According to the learned A.G.A., investigation in respect of named accused Karan is said to be pending.

10. Learned counsel for applicant contends that though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. Referring to the material on record, he submits that in the opinion of the Autopsy Surgeon, the deceased died on account of fatal head injury sustained by him. However, none of the witnesses examined under Section 161 Cr.P.C. have specified the author of the fatal head injury sustained by the deceased. The FIR giving rise to present criminal proceedings is completely silence in this regard. It is thus urged that general allegations have been made against all accused. It is next contended by the learned counsel for applicant that subsequent to the above FIR, 4 of the named accused except Karan were arrested. Subsequently, accused Karan surrendered before court below. He submits that after the arrest of named accused Shivraj and Arjun, their statements (confessional statements) were recorded. Named and charge sheeted accused Arjun in his confessional statement has attributed

the role of causing the fatal head injury on the head of the deceased to his father Shivraj. Shivraj in his confessional statement has confessed about inflicting the fatal head injuries on the body of the deceased but without any *mens rea*. He further contends that similarly situated and circumstanced named/charge sheeted co-accused Rohit Kumar has already been enlarged on bail by this Court vide order dated 21.09.2023 passed in Criminal Misc. Bail Application No. 41076 of 2023 (Rohit Kumar Vs. State of U.P.). For ready reference, the order dated 21.09.2023 is reproduced hereinunder:-

"1. Heard Sri Gyanendra Kumar Singh, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 327 of 2023, under Sections 147, 148, 149, 323, 302 IPC, Police Station Kayamganj, District Farrukhabad during pendency of the trial.

3. FIR of the present case was lodged against applicant and four others under Sections 147, 323, 307 IPC and according to the FIR applicant and other accused persons made assault through Lathi, Danda and Spade (Favra) and due to the assault made by them informant and his nephew sustained minor injuries and his grand father sustained serious injuries on his head.

4. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Sections 147, 323, 307 IPC but after the death of the injured case was converted under Section 302 IPC. He further submits that only general role has been assigned to all the accused persons including applicant. He further submits that post mortem report of the deceased shows that deceased sustained one injury and it is not on record that applicant is author of this injury. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 21.08.2023.

5. He further submits that actually informant side was the real aggressor and from the side of informant assault was made and due to the assault made by informant side from the side of applicant also two persons sustained injuries and their injury report has been annexed along with instant application.

6. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

7. I have heard learned counsel for the parties and perused the record of the case.

8. From the record, it reflects that on the basis of general allegation applicant has been made accused in the present matter along with four others and although in the incident three persons sustained injuries but injury sustained to the informant and his nephew appears to be simple in nature. Further, however subsequently due to the injury, grand father of the informant died but post mortem report suggests that he died due to head injury and there is no evidence on record that applicant is author of the

said injury. Further, from the side of applicant also two persons sustained injuries.

9. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

10. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

11. Let the applicant - Rohit Kumar be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

12. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

13. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial."

11. It is next contended that another named and charge sheeted co-accused Jabar Singh has also been enlarged on bail by this Court vide order dated 04.10.2023 passed in Criminal Misc. Bail Application No. 42316 of 2023 (Jabar Singh Vs. State of U.P.). For ready reference, the order dated 04.10.2023 is extracted hereinunder:-

"1. Heard Sri Gyanendra Kumar Singh, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 327 of 2023, under Sections 147, 148, 149, 323, 302 IPC, Police Station Kayamganj, District Farrukhabad during pendency of the trial.

3. FIR of the present case was lodged against applicant and four others under Sections 147, 323, 307 IPC and according to the FIR applicant and other accused persons made assault through Lathi, Danda and Spade (Favra) and due to the assault made by them informant and his nephew sustained minor injuries and his grand father sustained serious injuries on his head.

4. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Sections 147, 323, 307 IPC but after the death of the injured case was converted under Section 302 IPC. He further submits that only general role has been assigned to all the accused persons including applicant. He further submits that post mortem report of the

deceased shows that deceased sustained one injury and it is not on record that applicant is author of this injury. It is further submitted that co-accused Rohit Kumar has already been granted bail by this Court vide order dated 21.9.2023 passed in Crl.Misc. Bail Application No.41076 of 2023 (Rohit Kumar vs. State of UP) and the case of the applicant is at par with him. He further submits that applicant is having previous criminal history of two other cases, but both the cases were of minor nature and the criminal history of the applicant has been explained in the affidavit filed in support of bail application and in the present matter he is in jail since 21.07.2023.

5. He further submits that actually informant side was the real aggressor and from the side of informant assault was made and due to the assault made by informant side from the side of applicant also two persons sustained injuries and their injury report have been annexed along with instant application.

6. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant and the fact that bail application of Rohit Kumar has been allowed by this Court and the case of the applicant is at par with him.

7. I have heard learned counsel for the parties and perused the record of the case.

8. From the record, it reflects that on the basis of general allegation applicant has been made accused in the present matter along with four others and although in the incident three persons sustained injuries but injury sustained to the informant and his nephew appears to be simple in nature. Further, however subsequently due to the injury, grand father of the informant died but post mortem report suggests that he died due to head injury and there is no evidence on record that applicant is author of the said injury. Further, from the side of applicant also two persons sustained injuries.

9. Further, the bail application of Rohit Kumar has been allowed by this Court and the case of the applicant is at par with him.

10. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

11. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

12. Let the applicant - Jabar Singh be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

13. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the

bail of the applicant.

14. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial."

12. On the above premise, the learned counsel for applicant submits that the case of present applicant is similar and identical to aforementioned named and charge sheeted co-accused Rohit Kumar and Jabar Singh, who have already been enlarged on bail. There is nothing on record on the basis of which the case of present applicant could be so distinguished from aforementioned named and charge sheeted co-accused so as to deny bail to the present applicant. He, therefore, contends 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.

13. 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 03.07.2023. As such, he has undergone more than 4 and 1/2 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 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.

14. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently 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. Criminality committed by the named/charge sheeted accused is joint and common, therefore, the same is incapable of separation or segregation. As such, no exception can be carved out in the case of present applicant. 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.

15. 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 similarly situate and circumstanced

named/charge sheeted co-accused Rohit Kumar and Jabar Singh have already been enlarged on bail by this Court, none of the witnesses examined under Section 161 Cr.P.C. have specified the author of the fatal head injury sustained by the deceased, the FIR giving rise to present criminal proceedings is completely silent in this regard also, as per the confessional statement of named and charge sheeted co-accused Shivraj and Arjun, the author of the fatal head injury sustained by the deceased is co-accused Shivraj, as such, the case of present applicant is distinguishable from co-accused Shivraj, the learned A.G.A. and the learned counsel representing first informant could not point out any such circumstance from the record distinguishing the case of present applicant from named/charge sheeted but bailed out co-accused Rohit Kumar and Jabar Singh so as to deny bail to the present applicant, 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. and the learned counsel representing first informant 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. 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.

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

17. Let the **applicant-Arjun**, 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.

18. 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

Vinay