

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42801 of 2023

Applicant :- Punit Pal

Opposite Party :- State of U.P.

Counsel for Applicant :- Alok Ranjan Mishra, Sr. Advocate

Counsel for Opposite Party :- G.A., Manoj Kumar

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Gopal S. Chaturvedi, learned Senior Advocate, assisted by Sri Alok Ranjan Mishra, learned counsel for the applicant, Sri Manoj Kumar, learned counsel for the first informant, Sri Ajay Singh, learned AGA-I for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Punit Pal, seeking enlargement on bail during trial in connection with Case Crime No. 4 of 2022, under Sections 147, 148, 149, 323, 504, 506, 427, 394, 411, 302, 120-B I.P.C. and 7 Criminal Law Amendment Act, registered at P.S. Lalganj, District Basti.

4. The F.I.R. of the matter was lodged on 03.1.2022 by Ramayan Singh against Monu Pal, Gabbar Pal, Piyush Pal, Aakash Pal, Shani Pal, Vivek Pal, Punit Pal (the applicant) and some other unknown persons, with the allegations that on 02.1.2022 at about 03:30 p.m. he and his chacha Jitendra Singh along with his driver Rahul were coming on their Brezza Car wherein near Upadhyay market in Bankati bazar a truck was moving in front of their vehicle, on which the accused persons in conspiracy got the said truck stopped and then came to their vehicle and broke its glass and doors with iron rod. They pulled his chacha Jitendra Singh and all the accused persons armed with iron rod, bat and hockey while abusing mercilessly assaulted him due to which his chacha received serious injuries and became unconscious. He and his driver tried to save him and intervened on which he also received injuries. Due to fear of the accused persons no person of nearby came to save him. Later on they left his chacha and ran away. While going away they took away his golden chain and mobile phone of his chacha and driver. He then took his chacha with the help of other persons to PHC from where he was referred to District

Hospital from where, looking to his serious condition, he was referred to Lucknow. It is further stated that the accused persons are persons of criminal nature and have terror in the area. They often indulge in assaults and fight.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that as per the F.I.R., 07 named persons including the applicant and some other unknown persons have been assigned common, general and omnibus role of assault upon the deceased Jitendra Singh with iron rod, bat and hockey. It is argued that post mortem report of the deceased although shows four injuries on his person which are: (1) Stitched wound 05 cm long along with 05 stitches present on left side top of head 10 cm above left ear; (2) Contusion 10 cm x 08 cm present on left side head around injury no. 1; (3) Multiple abrasion present on dorsal side of B/L hand and (4) Abrasion 02 cm x 02 cm present in front of left knee joint. Further noting of the doctor are as follows:- "On opening- ecchymosis present underneath all above mentioned injuries, left side temporal bone fractured, subdural hematoma present left side of brain and back of ear" and "cause of death was opined as coma due to ante mortem head injury as noted". It is argued that fatal ante mortem injury is injury no. 1 on the body of the deceased. It is further argued that as per prosecution case itself 07 named persons including the applicant and some other unknown persons assaulted the deceased but he has received single fatal injury in the said incident and author of the said injury is not known. It is argued that the first informant Ramayan Singh was also medically examined but the doctor did not find any visible injury on his body as single injury noted was complaint of pain present all over body. It is argued that co-accused Gabbar@Satyendra Pal and Piyush Pal@Ashutosh Pal have been granted bail by co-ordinate Benches of this Court vide order dated 25.09.2023 passed in Criminal Misc. Bail Application No. 19833 of 2023 and vide order dated 17.10.2023 passed in Criminal Misc. Bail Application No. 43563 of 2023 respectively, copies of the said order have been produced before this Court which are taken on record. It is further argued while placing para-57 of the affidavit in support of bail application that the applicant is involved in three cases in which in one case is of the year 2008 in which he is on bail and trial is pending, the other case is of the year 2018 in which he is also on bail and trial is still pending whereas the 3rd case is a case under Gangster Act of the year 2022 which has been lodged after lodging of the present case in which also trial is pending. While placing para-31 (ii) of the affidavit in support of bail application it is argued that on the pointing out of the applicant, while being under the police custody, an iron rod is shown to have been

recovered but the same is from an open place easily accessible to all. It is argued that there is no corroboration of use of the said recovered articles. The applicant is in jail since 07.01.2022.

6. Per contra, learned counsel for the first informant vehemently opposed the prayer for bail and argued that the applicant is named in the F.I.R. and in the statements of witnesses and that of eye witnesses. There is recovery of an iron rod (sabal) on the pointing out of the applicant. It is argued that co-accused Vivek Pal@Shani has applied for bail before this Court which has been rejected vide order dated 25.5.2023 passed by a co-ordinate Bench of this Court in Criminal Misc.Bail Application No.19930 of 2023, copy of the said order has been produced before this Court which is taken on record. It is argued that all the accused persons had a common object after which they joined hands and committed present incident and also that the CDRs of the applicant and other accused persons would go to show that they were in touch with each other and were near about the place of occurrence.

7. Learned State counsel also vehemently opposed the prayer for bail and argued that in so far as the deceased is concerned, he died after 07 days of the incident and as such other injuries received on his person could not have been noted in the F.I.R. He places CD No. 36 which states that Jitendra Singh in injured condition was examined in District Hospital, Basti where the doctor found 4 injuries on his person. He states that although photograph of the deceased in the post mortem report goes to show that the deceased has received injuries on his head, both palms and on knee joint and also the same are mentioned in the injuries as noted in the post mortem examination report which would go to show that there was one fatal injury on his body but as a matter of fact four injuries were found on his body. It is argued that there is recovery of incriminating article on the pointing out of the applicant. The incident is day light incident and the first informant is an injured eye witness. It is argued that the incident is of grave nature. It is argued that as such the prayer for bail be rejected.

8. After having heard learned counsels for the parties and perusing the records, it is evident that although the applicant is named in the F.I.R. but he is named along with six other accused persons and some other unknown persons. The fatal injury on the body of the deceased is the first injury as recorded in the post mortem examination report which also corresponds the cause of death of the deceased. Recovery of iron rod is from an open place without further corroboration of its use. Co-accused Gabbar@Satyendra Pal and Piyush Pal@Ashutosh Pal have been granted bail by co-ordinate Benches of this Court. In

so far as parity of rejection is concerned, the same is not a ground of rejection of bail of an accused, if he makes out a case for bail.

9. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

10. Let the applicant- Punit Pal, be released on bail in the aforesaid case crime number on 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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.

(V) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and

try to conclude the trial expeditiously after the release of the applicant.

11. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

12. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 31.10.2023

Naresh