

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43713 of 2023

Applicant :- Aman Tripathi

Opposite Party :- State of U.P.

Counsel for Applicant :- A.Z.Khan

Counsel for Opposite Party :- G.A.,Pankaj Sharma,Sukesh Kumar

Hon'ble Rajeev Misra,J.

1. Heard Mr. A.Z. Khan, the learned counsel for applicant, the learned A.G.A. for State and Mr. Sukesh Kumar, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Aman Tripathi, seeking his enlargement on bail in Case Crime No. 598 of 2023, under Section 302 IPC, Police Station-Cantt, District-Gorakhpur during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 09.08.2023, a delayed FIR dated 10.08.2023 was lodged by first informant-Satyam Singh (brother of deceased) and was registered as Case Crime No. 598 of 2023, under Section 307 IPC, Police Station-Cantt, District-Gorakhpur. In the aforesaid FIR, two unknown persons traveling in Alto Car bearing Registration No. UP 53 EK 7641 have been arraigned as accused.

5. The gravamen of the allegations made in the FIR is to the effect that initially the passengers of the offending vehicle i.e. aforementioned Alto Car had a scuffle with the brother of the first informant, who was riding a motorcycle and thereafter the passengers of the said Alto Car are alleged to have collided the said vehicle with the motorcycle of the brother of first informant on account of which, he sustained injuries.

6. 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, the victim-Swapnil Singh died while undergoing treatment. Consequently, the case was converted under Section 302 IPC.

7. After death of deceased, the death certificate was issued by the Doctor of hospital, in which, the death of deceased has occurred. As per the death certificate issued by the Medical Officer, Madison

Hospital, the death of deceased had occurred on account of cardiac arrest. The said document is on record at C.D. Parcha No. 8. The inquest (*Panchayatnama*) of the body of deceased was conducted. In the opinion of witnesses of inquest (*Panch witnesses*), the nature of death of deceased was categorized as homicidal and the cause of death of deceased was specified as deliberate banging of the offending vehicle with the motorcycle of deceased. Subsequent to above, the post mortem of the body of deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was Comma as a result of ante-mortem head injuries. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"Contusion 12 cm x 6 cm present on forehead and top of head joint above root on scabbed multiple abrasion front on whole back.

2. On opening ecchymosis present underneath injury o. 1.

3. Subdural hematoma present at frontal region and back and base of brain. Frontal bone fractured."

8. Investigating Officer recorded the statements of the following witnesses under Section 161 Cr.P.C.:-

(1) Satyam Singh (First Informant), who is not an eye witness of the occurrence, in his statement has, however, supported the FIR,

(2) Harsh Yadav (eye witness), is an eye witness of the occurrence inasmuch as, he is a pillion passenger of the motorcycle. This witness in his statement has supported the FIR. According to this witness, the motorcycle of the deceased was banged by the offending vehicle i.e. Alto Car.

(3) Udai Narayan Pandey and Ashutosh Tripathi are not eye witnesses of the occurrence. Therefore, their statement is based on hearsay evidence.

(4). Subsequent to above, second statement of first informant was recorded under Section 161 Cr.P.C., wherein he disclosed the name of the driver of offending vehicle i.e. Aman Tripathi.

9. Investigating Officer further examined Dr. Ravi Rai. This witness had attended the patient i.e. injured (deceased) at the lieu of his admission to the hospital. Investigating Officer further recovered the CCTV footage from the spot which is at page 77 of the case diary. From the perusal of the CCTV footage so recovered, the driver of the offending vehicle was identified as Aman Tripathi (applicant herein). On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of

applicant is fully established in the crime in question. He, accordingly, submitted the charge sheet dated 19.11.2023.

10. Mr. A.Z. Khan, the learned counsel for applicant submits that though applicant is a charge sheeted accused yet he is liable to be enlarged on bail. Present case is case of accidental death and not a case of murder. Therefore, according to the learned counsel for applicant, criminality, if any, committed by the applicant shall not travel beyond Section 304-A IPC. Attention of the Court was then invited to the Technical Inspection Report of the offending vehicle i.e. Alto Car. Same is on record at page 57 of the paper book. With reference to the recital contained therein, he submits that prosecution story as unfolded in the FIR that offending vehicle was banged with the motorcycle of deceased is wholly false. Apart from above, there is an inherent fallacy in the prosecution case which remains unexplained up to this stage. One of the witness Harsh Yadav is said to be an eye witness on the ground that he was a pillion passenger. However, this witness has not sustained any injury inasmuch as, there is nothing in the case diary to establish the same. On the above conspectus, the learned counsel for applicant submits that applicant is liable to be admitted to bail.

11. 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 24.08.2023. As such, he has undergone almost 3 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.

12. Per contra, the learned A.G.A. and the learned counsel representing first informant have opposed the prayer for bail. He submits that since applicant is a charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The deceased was a fairly elderly man, who has been put to death by applicant. As such, 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 in support of the present application for bail with reference to the record at this stage.

13. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant,

upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that as per the Technical Inspection Report, prima-facie, the prosecution story does not stand corroborated, the applicant is sought to be implicated in the crime in question on the basis of CCTV footage recovered by the Investigating Officer, however, in the entire case diary there is no certificate in terms of Section 65-B regarding aforesaid Electronic Evidence, 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, the judgment of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), 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.

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

15. Let the **applicant-Aman Tripathi**, 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.

16. 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 :- 23.11.2023

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