

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42782 of 2023

Applicant :- Ajeet Kumar Yati

Opposite Party :- State of U.P.

Counsel for Applicant :- Rama Shankar Mishra

Counsel for Opposite Party :- G.A.,Ashok Kumar Singh

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29454 of 2023

Applicant :- Deepak Rai

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar Pandey,Sharvan Kumar Rai

Counsel for Opposite Party :- G.A.,Ashok Kumar Singh

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33510 of 2023

Applicant :- Vivek Rai @ Ravan Rai

Opposite Party :- State of U.P.

Counsel for Applicant :- Kalp Dev Mishra,Awashesh Kumar

Counsel for Opposite Party :- G.A.,Ashok Kumar Singh

Hon'ble Rajeev Misra,J.

Heard Mr. Rama Shankar Mishra, the learned counsel for applicant- Ajeet Kumar Yati, Mr. Anil Kumar Pandey, the learned counsel for applicant- Deepak Rai, Mr. Kalp Dev Mishra, the learned counsel for applicant- Vivek Rai @ Ravan Rai, the learned A.G.A. for State and Mr. Ashok Kumar Singh, the learned counsel for first informant.

Perused the record.

Supplementary affidavit filed by the learned counsel for applicant-

Ajeet Kumar Yati, in Court today, is taken on record.

These applications for bail have been filed by applicants- Ajeet Kumar Yati, Deepak Rai and Vivek Rai @ Ravan Rai, seeking their enlargement on bail in Case Crime No. 189 of 03, under sections 147, 302, 201, 506, 34 IPC, Police Station- Kotwali, District Ghazipur, during the pendency of trial.

Record shows that an F.I.R. dated 14.4.2023 was lodged by Jai Singh, father of the deceased and was registered as Case Crime No. 189 of 03, under sections 147, 30, 201, 506, 34 IPC, Police Station- Kotwali, District Ghazipur. In the aforesaid F.I.R. two persons namely, Ram Naresh Rai and Ravi Rai have been nominated as named accused.

Subsequent to the above mentioned F.I.R, the skeleton of the body of deceased was recovered on 14.4.2023. As per report of autopsy surgeon, the cause of death of deceased was opined as ante-mortem head injury. Investigating Officer during course of investigation, examined first informant and other witnesses under section 161 Cr.P.C. namely, Sanjeev Sahu @ Kalu, Sandeep Yadav, Smt. Shobha Singh, Vishal Singh, Ajeet Yadav. On the basis of above and other material collected by Investigating Officer, it was discovered that not only the complicity of named accused but also three other persons namely, Deepak Rai, Vivek Rai, and Ajeet Giri is also established. Accordingly, all the aforesaid accused were arrested. The weapon of assault (Lohe ka Phatta) was recovered from Ravi Rai, This witness in his confessional statement has conferred that fatal blow upon the deceased was given by him. Subsequently, on the basis of above and other material collected by Investigating Officer, during course of investigation he came to the conclusion that complicity of aforementioned accused is established in the crime in question. He, accordingly submitted the charge sheet dated 21.6.2023, whereby aforesaid accused have been charge sheeted under sections 147, 302, 201, 506, 34 IPC.

At the very outset, learned counsel for applicants submit that named and charge sheeted co-accused Ram Naresh Rai, has already been enlarged on bail by this Court vide order dated 3.10.2023, passed in Criminal Misc. Bail Application No. 27572 of 2023 (Ramnaresh Rai Vs. State of U.P.). For ready reference, the same is reproduced herein under:

"वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र , आवेदक रामनरेश राय की ओर से मु०अ०सं० 189 सन 2023, अन्तर्गत धारा 147, 302, 201, 506, 34 भा०दं०वि०, थाना

कोतवाली, जिला गाजीपुर में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

आवेदक के विद्वान अधिवक्ता ने पूरक शपथपत्र दाखिल किया, इसे पत्रावली पर रखा जाय।

आवेदक के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

आवेदक के विद्वान अधिवक्ता का कथन है कि आवेदक को इस प्रकरण में गलत एवं फर्जी तरीके से झूठा फँसाया गया है, उसने कथित अपराध कारित नहीं किया है, प्रथम सूचना रिपोर्ट के अनुसार घटना का कोई चश्मदीद साक्षी नहीं है तथा न ही कोई परिस्थितिजन्य साक्ष्य है, प्रथम सूचना रिपोर्ट के अनुसार मृतक आदित्य 6-7 माह से घर नहीं गया था, इसके बावजूद भी किसी थाने में कोई प्रथम सूचना रिपोर्ट अंकित नहीं करायी गयी, आवेदक विशेष न्यायाधीश, गैंगेस्टर ऐक्ट न्यायालय में विशेष लोक अभियोजक के पद पर कार्यरत है, प्रभारी निरीक्षक विवेचक से गैंगेस्टर कोर्ट में मुकदमें के दौरान हॉट-टाक हो गया जिसके प्रतिशोध में उन्होंने आवेदक का चालान इस मामले में कर दिया, आवेदक निर्दोष है तथा वह इस प्रकरण में 14-4-2023 से कारागार में निरुद्ध है, इसलिए आवेदक को जमानत पर छोड़ दिया जाय।

विद्वान अपर शासकीय अधिवक्ता ने आवेदक के विद्वान अधिवक्ता के तर्कों का प्रबल विरोध करते हुए तर्क प्रस्तुत किया कि आवेदक द्वारा कारित अपराध संज्ञेय एवं गम्भीर प्रकृति का है, इसलिए आवेदक को जमानत पर न छोड़ा जाय।

आवेदक के विद्वान अधिवक्ता के तर्कों के परिप्रेक्ष्य में पत्रावली पर उपलब्ध सारवान तथ्यों एवं परिस्थितियों का समग्र रूप से अवलोकन करने के बाद, सबूतों की प्रकृति और किसी भी ठोस विरोधात्मक सामग्री की अनुपस्थिति एवं उपलब्ध सामग्री से छेड़छाड़ की संभावना न होने के तथ्य को देखते हुए मेरी राय में आवेदक को जमानत पर मुक्त करने का उपयुक्त आधार है।

अतः वाद के गुण दोष पर बिना कोई टिप्पणी किए हुए आवेदक को उपरोक्त वर्णित अपराध में संबंधित न्यायालय की सन्तुष्टि पर व्यक्तिगत बंध-पत्र एवं अधिक धनराशि के दो स्थानीय प्रतिभू प्रस्तुत करने पर निम्नलिखित शर्तों के साथ जमानत पर छोड़ दिया जाय।

1- आवेदक विवेचना या परीक्षण के दौरान अभियोजन साक्ष्यों के साथ छेड़छाड़ नहीं करेगा।

- 2- आवेदक अभियोजन साक्षियों व पीड़ित / शिकायतकर्ता को डरायेगा / धमकायेगा नहीं।
- 3- आवेदक न्यायालय के आदेशों का पालन करेगा , वह परीक्षण के दौरान बिना कोई अनावश्यक स्थगन लिए नियत तिथि पर न्यायालय में उपस्थित होगा तथा परीक्षण में ईमानदारी से सहयोग करेगा।
- 4- आवेदक जमानत पर रिहा होने के बाद जमानत की स्वतंत्रता का दुरुपयोग नहीं करेगा और किसी भी अपराधिक गतिविधि में लिप्त नहीं होगा न कोई अपराधिक कृत्य करेगा।
- 5- आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से मामले के तथ्यों से परिचित किसी भी व्यक्ति या पुलिस अधिकारियों को कोई प्रलोभन या धमकी नहीं देगा न ही उनसे कोई वायदा करेगा , जिसके कारण उन्हें न्यायालय में तथ्यों को उजागर करने से विरत रहना पड़े।
- उपरोक्त शर्तों में से किसी के उल्लंघन के मामले में , परीक्षण न्यायालय आवेदक की जमानत नियमानुसार रद्द करने को स्वतंत्र है।"

It is then contended that though the recovery of purse of the deceased was made on the pointing of applicant- Ajeet Kumar Yati. However, the aforesaid circumstance by itself is not so sufficient so as to infer the guilt of applicant in the crime in question. The said recovery was made from near the place of occurrence. There is no independent witnesses of recovery. The said recovery is implanted. As such, the same cannot be relied upon. Attention of the Court was invited by learned counsel for applicant to the confessional statement of the named and charge sheeted accused, which is on record at page 32 of the paper book, pertaining to applicant Ajeet Kumar Yati. With reference to above, he submits that as per confessional statement of the aforesaid named and charge sheeted accused, the role of present applicants is distinguishable from named and charge sheeted co-accused. Since similarly situate and circumstanced co-accused Ram Naresh Rai has already been enlarged on bail, therefore present applicants are also liable to be enlarged on bail on the ground of parity.

Even otherwise, applicants have criminal history to their credit, but the same have sufficiently been explained. Applicant- Ajeet Kumar Yati is in jail since 17.5.2023. Applicant- Deepak Rai is in jail since 14.4.2023. Applicant- Vivek Rai @ Ravan Rai is in jail since 15.4.2023. As such, they have undergone sufficient period of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicant

stands crystalized. However, upto this stage, no such, circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged that applicants are liable to be enlarged on bail. In case the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. and the learned counsel for first informant have opposed the prayer for bail. They submit that since applicant is a named as well as charge sheeted accused, therefore they do not deserve any indulgence by this Court. 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.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicants,, accusation made coupled with the fact as per confessional statement of named/charge sheeted accused, the fatal blow on the body of deceased was struck by co-accused Ravi Rai though complicity of other charge sheeted accused is established as per confessional statement of the named and charge sheeted accused, but the role of other co-accused is distinguishable from Ravi Rai, similarly situate and circumstances named and charge sheeted co-accused Ram Naresh Rai has already been enlarged on bail, the learned A.G.A. and learned counsel for first informant could not point any such distinguishing feature in the case of present applicant so as to distinguish his case from other co-accused so as to deny bail to present applicants, explained criminal history of applicants, period of incarceration undergone, police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized, yet inspite 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, the recovery of purse of deceased from co-accused Ajeet Kumar Yati is unreliable inasmuch as same was made from after seven months of occurrence, there being no independent witness of the recovery, therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present applications for bail, but without making any comment on the merits of the case, the applicant has made out a case for bail.

Accordingly the bail applications are **allowed**.

Let the applicants- **Ajeet Kumar Yati, Deepak Rai and Vivek Rai @ Ravan Rai** 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 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her 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 :- 11.12.2023/Arshad