

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43718 of 2023

Applicant :- Pradeep Nishad

Opposite Party :- State of U.P.

Counsel for Applicant :- K.K.Rao, Sarvjeet Singh Chauhan

Counsel for Opposite Party :- G.A., Karuna Nand Tiwari

Hon'ble Rajeev Misra, J.

Heard Mr. K.K.Rao, the learned counsel for applicant, the learned A.G.A. for State and Mr. Karuna Nand Tiwari, the learned counsel representing first informant.

Perused the record.

This application for bail has been filed by applicant Pradeep Nishad seeking his enlargement on bail in Case Crime No. 0188 of 2023, under Section 302, 201 and 120 B IPC, P.S. Paniyara, District Mahrajganj, during the pendency of trial.

Learned counsel for applicants submits that applicant is not named in the F.I.R. Applicant is innocent. He has been falsely implicated in the crime in question. Though, applicant is a charge sheeted accused, inasmuch as the charge sheet has been submitted against applicant on 18.07.2023 yet he is liable to be enlarged on bail.

Present case is a case of circumstantial evidence and therefore there is no eyewitness of the occurrence. The complicity of an accused in a case based on circumstantial evidence has to be inferred in accordance with the parameters laid down by the Apex Court in the case of **Shard Birdhi Chand Sharda Vs. State of Maharashtra, AIR 1984 SC 1622**. However, upto this stage, none of the parameters laid down by the Apex Court in aforementioned judgement is satisfied against applicant. The complicity of the applicant in the crime in question has emerged as per the statements of Nisha and Rekha recorded under Section 161 Cr. P. C. Apart from above, as per the C.D.R. report the location of the mobile phone of the applicant was found under the same tower as that of the deceased on the date of occurrence and a day before the date of occurrence. Except for the aforesaid incriminating circumstances, no other circumstance has emerged against

applicant to infer the guilt of the accused.

On the above premise, the learned counsel for applicant submits that the incriminating circumstance that have been gathered by the Investigating Officer against applicant are not by themselves so sufficient so as to infer the guilt of the applicant in the crime in question. There is no recovery on the pointing of applicant, nor that is evidence of last seen. No strong motive to commit the crime in question has emerged against applicant either. Moreover, as there is no previous enmity, as such no animus can be said to be with the applicant to commit the crime in question.

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 02.06.2023. As such, he has undergone more than 4 months of incarceration. He, therefore, submits that the 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.

Per contra, the learned A.G.A., and Mr. Karuna Nand Tiwari, the learned counsel representing first informant have 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. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

Having heard the learned counsel for applicants, the learned A.G.A. for state, Mr. Karuna Nand Tiwari, the learned counsel representing first informant, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that present case is a case of circumstantial evidence and therefore, there is no eyewitness of the occurrence, the complicity of an accused in a case based upon circumstantial evidence has to be inferred in accordance with the parameters laid down by the Apex Court in **Shard Birdhi Chand Sharda Vs. State of Maharashtra, (supra)** the incriminating circumstances that have emerged against applicant during the course of investigation (as noted above) are by themselves not so sufficient and cogent so as to infer the guilt of the applicant in the crime in question, there is no recovery from the applicant nor there is any evidence of last seen against applicant, no strong motive to commit the crime in question has emerged against applicant either, there is no previous enmity, therefore, no animus can be gathered against applicant, the clean

antecedents of applicant, the period of incarceration undergone, the police report in terms of 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, upto this stage, no such incriminating circumstance has emerged 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 for first informant in opposition to the present application for bail, but without expressing any comments on the merits of the case, the applicant has made out a case for bail.

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

Let the applicant Pradeep Nishad involved in aforesaid case crime number, be released on bail on their furnishing a personal bond with two heavy 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 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..

(iii) 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.

(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 him 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 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 :- 13.10.2023

HSM