

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43728 of 2023

Applicant :- Rambha Pandey

Opposite Party :- State of U.P.

Counsel for Applicant :- Gaurav Kumar Singh

Counsel for Opposite Party :- G.A., Ubaidur Rehman

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47031 of 2023

Applicant :- Adarsh Pandey

Opposite Party :- State of U.P.

Counsel for Applicant :- Gaurav Kumar Singh

Counsel for Opposite Party :- G.A., Ubaidur Rehman

Hon'ble Rajeev Misra, J.

1. Heard Mr. Gaurav Kumar Singh the learned counsel for applicants-Rambha Pandey and Adarsh Pandey, the learned A.G.A. for State and Mr. Ubaidur Rehman, the learned counsel representing first informant.

2. Perused the record.

3. These applications for bail have been filed by applicants-**Rambha Pandey** and **Adarsh Pandey** seeking their enlargement on bail in Case Crime No. 165 of 2023, under Sections 323, 504, 506, 304 I.P.C. Police Station- Kuber Esthan, District- Kushinagar during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 24.06.2023, a delayed F.I.R. dated 27.06.2023 was lodged by first informant Krishan Kant Pandey (son of the deceased) and was registered as Case Crime No. 165 of 2023, under Sections 323, 504, 506, 304 I.P.C. Police Station- Kuber Esthan, District- Kushinagar. In the aforesaid F.I.R., three persons namely- Santosh Pandey, Rambha Pandey and Adarsh Pandey have been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that a scuffle took place in between the parties with regard to placement of mud in the filed. Subsequently, named accused are alleged to have united and armed with Danda and Shovel (Kudal) assaulted the father of the first informant. The sister and mother of the first informant intervened but Adarsh Pandey assaulted the father of the first informant with a brick on his head on account of which he fell on the ground. Ultimately the father of the first informant died.

6. After aforementioned F.I.R. was lodged, the inquest of the deceased (Panchayatnama) was conducted. In the opinion of the witnesses of inquest (Panch Witnesses) the nature of death of the deceased was categorized as homicidal and the cause of death of the deceased was said to be injury sustained by the deceased in the scuffle that took place between the parties. Subsequent to above, 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 is hemorrhage and shock due to ante-mortem injury. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

1. Two stitched wounds over above left ear.

2. Contused swelling 11 cm x 6 cm.

7. Investigating Officer, thereafter recorded the statements of the first informant-Krishna Kant Pandey(son of the deceased) and other witnesses namely Chama Pandey and Shyama Pandey, mother and sister of the first informant. All the three witnesses in their statements under Section 161 Cr.P.C. have narrated a common story that the deceased was assaulted by a brick on his head by named accused Adarsh Pandey. Subsequently, the named accused were arrested. On the pointing of applicant Adarsh Pandey the brick that was used in the commission of crime in question was recovered and was having blood stain. The kudal that was used by co-accused Santosh Pandey was also recovered. However, the same did not have any blood stain. On the basis of above and other material collected by the Investigating Officer during course of investigation, he came to the conclusion that complicity of all the named accused is established in the crime in question. Accordingly he submitted the charge sheet dated 17.09.2023, whereby, named accused have been charge sheeted under Sections under Sections 323, 504, 506, 304 I.P.C.

8. At the very outset, the learned counsel for applicants contends

that named and charge sheeted accused Santosh Pandey has already enlarged on bail vide order dated 18.08.2023 passed in Criminal Misc. Bail Application No. 36273 of 2023 (Santosh Pandey Vs. State of U.P.). For ready reference the same is reproduced hereinunder:

"1. वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र, आवेदक संतोष पाण्डेय की ओर से मु०अ०स० 165/2023, अन्तर्गत धारा 304/ 323 पा०द०वि०, थाना कुबेरस्थान, जिला कुशीनगर में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

2. आवेदक के विद्वान अधिवक्ता, परिवादी के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

3. वाद के तथ्य इस प्रकार हैं कि वादी मुकदमा द्वारा दिनांक 24.06.2023 को लगभग 11.30 ए.एम पर उसने पट्टीदार संतोष पाण्डेय स्व. सुरेश पाण्डेय अपनी जमीन पर शौचालय का निर्माण के लिए गड्ढा खोद रहे थे, गड्ढे का मलवा मिट्टी आदि मजदूरों के द्वारा उसके जमीन में डाला जाने लगा, जिस पर वह और उसके पिता संजय पाण्डेय ने उससे कहा कि आपकी जमीन आगे है उस पर मिट्टी डालिये। इस बात पर संतोष पाण्डेय आग बबूला हो गये तथा उसकी पत्नी रम्भा पाण्डेय उनका लड़का आदर्श पाण्डेय सभी एक राय होकर अपने-अपने हाथ में लिए डण्डा कुदाल से उसके पिता संजय पाण्डेय को बुरी तरीके से मारने लगे। उसकी मां श्यामा पाण्डेय, उसकी बहन क्षमा पाण्डेय ने आकर बीच बचाव करने लगे तभी आदर्श पाण्डेय अपने हाथ में लिये ईंट से उसके पिता संजय पाण्डेय के सर में जोर से मारा जिससे उसके पिता मुर्छित होकर वहीं गिर गये।

4. आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि आवेदक को इस प्रकरण में गलत एवं फर्जी ढंग से झूठा फंसाया गया है, उसने कथित अपराध कारित नहीं किया है, उनका यह भी कहना है कि प्रथम सूचना रिपोर्ट के अवलोकन से यह विदित होता है कि आवेदक, मृतक, व उसके परिवार के लोग आपस में पट्टीदार हैं और दोनों का घर पास-पास है। आवेदक अपनी जमीन में शौचालय बनाने के लिए दिनांक 24.06.2023 को समय लगभग 11.30 ए.एम पर गड्ढा खोद रहे थे किन्तु इस गड्ढे की मिट्टी व अन्य मिट्टी को मुकदमा वादी के जमीन पर डाल रहे थे जिससे यह लोग मना किये तो संतोष पाण्डेय आग बबूला हो गया व उनके परिवार के लोग उनकी पत्नी रम्भा पाण्डेय उनका लड़का आदर्श पाण्डेय सभी एक राय होकर अपने-अपने हाथ में लिए डण्डा कुदाल लेकर संजय पाण्डेय को बुरी तरीके से मारने लगे, तभी आदर्श पाण्डेय अपने हाथ में लिये ईंट से, संजय पाण्डेय के सर में जोर से मारा जिससे संतोष

पाण्डेय वहीं मुर्छित होकर गिर गये। पोस्टमार्टम रिपोर्ट के अनुसार मृतक के शरीर पर

दो चोटें

1. Two stitched wound as left side temporal region 7cm above left ear.

2. Contused swelling 11 CM 6CM over left perital region. तथा मृतक की मृत्यु का कारण Antimortam injury आया है। Haemrage and Shock Due to

5. उक्त प्रथम सूचना रिपोर्ट एवं पोस्टमार्टम रिपोर्ट के अवलोकनार्थ यह स्पष्ट हो जाता है कि तथाकथित घटना कारित करने की मुख्य भूमिका आदर्श पाण्डेय की है। आवेदक निर्दोष है तथा वह इस प्रकरण में दि० 28.06.2023 से कारागार में निरुद्ध है इसलिए आवेदक को जमानत पर छोड़ दिया जाय।

6. परिवादी के विद्वान अधिवक्ता एवं 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 गंभीर प्रकृति का है, इसलिए आवेदक को जमानत पर न छोड़ा जाये।

7. 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।

8. अतः बाद 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 पीड़िता / 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 ईमानदारों 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।"

9. According to the learned counsel for applicants the case of the present applicants are similar and identical to the aforementioned charge sheeted/bailed out co-accused. There is no such distinguishing feature on the basis of which the case of present applicants could be so distinguished from the aforementioned bailed out co-accused so as to deny him bail. He therefore contends that in view of above and for the facts and reasons recorded in the bail order of aforementioned co-accused, applicants are also liable to be enlarged on bail on the ground of parity.

10. It is then contended that applicant Rambha Pandey is a lady and therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C.

11. According to the learned counsel for applicants the occurrence giving rise to the present criminal proceedings had occurred at the spur of the moment on account of grave and sudden provocation. Consequently, the same is covered under the fourth exception to Section 300 I.P.C. As such, the criminality committed by the applicants shall be culpable homicide not amounting to murder. It is

thus urged by the learned counsel for applicants that since no fire arm or deadly weapon of assault was used by the applicants in the crime in question, therefore, the case in hand is not likely to travel beyond 304 part-II.

12. Even otherwise, applicants are of clean antecedents inasmuch as, they have no criminal history to their credit except the present one. Applicant-Rambha Pandey is in jail since 23.08.2023. Applicant- Adarsh Pandey is in jail since 28.06.2023. As such, they have undergone substantial period 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 applicants stands crystallized. However, upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicants during the pendency of trial. On the above premise, he submits 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.

13. 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 applicants are named and charge sheeted accused, therefore, no indulgence be granted by this Court in favour of applicants. According to the learned A.G.A. the weapon of assault used by named and charge sheeted co-accused i.e the applicant Adarsh Pandey was recovered on the pointing of applicant Adarsh Pandey himself. The injury suffered by the deceased on his head is due to assault made by the applicant Adarsh Pandey. As such, the case of applicant-Adarsh Pandey is clearly distinguishable from the other co-accused. Since, the criminality committed by the named and charge sheeted accused is joint and common, as such, the same is incapable of being separated or segregated. As such, no exception can be carved out in the case of present applicants. On the above conspectus, it is urged no sympathy be shown by this Court in favour of applicants. 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.

14. Having heard, the learned counsel for applicants, the learned A.G.A. for State, the learned counsel representing first informant upon perusal of record, evidence, nature and gravity of offence, complicity of accused and accusation made coupled with the fact that the occurrence had taken place at the spur of the moment on account of grave and sudden provocation, as such, the offence

complained of is covered under the four exception to Section 300 I.P.C., since no fire arm or deadly weapon of assault was used by the applicants Adarsh Pandey in the commission of crime, therefore, the offence complained of shall prima facie not be travel beyond 304 part II I.P.C., the other co-accused Santosh Pandey has already been enlarged on bail, applicant Rambha Pandey is a lady, therefore, she is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., the clean antecedents of applicants, the period of incarceration undergone, the police report under Section 173 (2) Cr.P.C i.e. charge-sheet has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicants stands crystallized, yet in spite of above, the learned A.G.A. and the learned counsel for first informant could not point out any such circumstance from the record necessitating the custodial arrest of applicants 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 applications for bail, but without making any comments on the merits of the case, the applicants have made out a case for bail.

15. Accordingly, the bail applications are **allowed**.

16. Let the applicants-**Rambha Pandey and Adarsh Pandey**, be released on bail in the aforesaid case crime number on their 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 APPLICANTS 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 APPLICANTS 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 APPLICANTS MISUSE 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 APPLICANTS 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.

17. However, it is made clear that any wilful violation of above conditions by the applicants, shall have serious repercussion on their 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 :- 12.12.2023

Imtiyaz