

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43959 of 2023

Applicant :- Bhola Prasad

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajeev Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Rajeev Kumar Singh, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. Instant application for bail has been filed by applicant-Bhola Prasad seeking his enlargement on bail in Case Crime No. 122 of 2023 under Section 302 I.P.C., Police Station-Pipiganj, District-Gorakhpur, during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 07.04.2023 a prompt F.I.R. dated 07.04.2023 was lodged by first informant Sonu Prasad (son of the deceased) and was registered as Case Crime No. 122 of 2023 under Section 302 I.P.C., Police Station-Pipiganj, District-Gorakhpur. In the aforesaid F.I.R. an unknown person has been arraigned as solitary accused.

5. The gravamen of the allegations made in the F.I.R is to the effect that on 06.04.2023 at around 8.30 PM Shivdhar Prasad i.e. father of the first informant after taking his dinner went to the room situate in his field. However, he did not return home even till late in the morning. Thereafter, a hectic search was made

regarding his whereabouts and then it was discovered that some unknown person had brutally assaulted the father of first informant on his head and face on account of which he has sustained crush injury and died.

6. After aforementioned F.I.R. was lodged, the Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. Thereafter, inquest (Panchayatnama) of the body of deceased was conducted on 07.04.2023 itself. In the opinion of witnesses of inquest (panch witnesses), the nature of death of deceased was categorised as homicidal and cause of death was said to be injury sustained by the deceased. Subsequent to above, post-mortem of the body of deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of the deceased, cause of death of deceased was hemorrhagic shock and comma as a result of ante mortem injury sustained by the deceased. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"i. Crush injury on face with fractum of mandible. clotted blood present all over face.

ii. Contused Traumatic swelling over Rt. side of scalp 6 cm x 4 cm on cutting st ear underneath scalp haumatoma present and cutting the bone membrain heamotoma present

iii Swelling over Rt. thigh 10 cm x 7 cm, 6 cm above knee joint on cutting fraction of Rt.. bone present..

7. During course of investigating, the Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C.. The complicity of present applicant surfaced in the crime in question as per parcha no. 2 of the case diary, copy of which is on record at pages 44-45 of the paper book. As per said document,

the Investigating Officer inferred suspicious against applicant as there was rumor in the village that applicant committed the crime in question. Simply on the basis of above, applicant was arrested on 09.04.2023. Thereafter confessional statement of the applicant was recorded wherein he is alleged to have confessed the commission of the crime in question. 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 established in the crime in question. Accordingly, he submitted the charge sheet dated 26.04.2023 whereby applicant has been charge sheeted under Section 302 I.P.C..

8. Learned counsel for applicant contends that applicant is the elder son of the deceased. Applicant is innocent. He has been falsely implicated in the crime in question. Applicant is not named in the F.I.R. Though the applicant is a charge-sheeted accused yet he is liable to be enlarged on bail. As per prosecution story as unfolded in the F.I.R. he submits that present case is a case of circumstantial evidence. As such, there is no eye-witness of the occurrence. Complicity of an accused in a case based upon circumstantial evidence has to be decided in accordance with the parameters laid down by Apex Court in **Sharad Birdhi Chand Sarda vs State Of Maharashtra reported AIR 1984 SC 1622**. However, none of the parameters laid down in aforesaid judgement are satisfied against present applicant, upto this stage. No recovery has been made from applicant nor there is any evidence of last seen. The first informant is not an eye witness of the occurrence, therefore his testimony is only based upon suspicion. Upto this stage, no strong motive has emerged against applicant to commit the crime either. As per material collected by Investigating Officer no animus can be gathered against applicant for

committing the crime in question. Applicant has been charge sheeted on the basis of recovery of a Danda which is alleged to have recovered on 09.04.2023 i.e after 2 days of the occurrence. According to learned counsel for applicant, the recovery is false and implanted. There is no independent witness of the recovery. Weapon was recovered is said to have blood stains. However recovered weapon has not been sent to FSL Laboratory to ascertain that blood stains on Danda is human blood or not. Moreover, the injuries sustained by the deceased could not have been caused by the weapon so recovered. He therefore submits that simply on the basis of aforesaid incriminating circumstance the complicity of applicant in the crime in question cannot be inferred.

9. 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 custody since 09.04.2023. As such, he has undergone more than six and a half months of incarceration. Police report (charge-sheet) 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 crystallised. However, upto this stage, no such incriminating 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.

10. Per contra, the learned A.G.A. for State has opposed the prayer for bail. He submits that since applicant is a charge-sheeted accused therefore he does deserve any indulgence by this Court. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with

reference to the record at this stage.

11. Having heard the learned counsel for applicant, the learned A.G.A. for State and upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant coupled with the fact that present case is a case of circumstantial evidence, therefore there is no eye witness of the occurrence, the complicity of accused in a case based upon circumstantial evidence has to be judged in the light of parameters laid down by Apex Court in **Sharad Birdhi Chand Sarda (supra)** referred to above, up to this stage, none of the parameters laid down by Apex Court in aforementioned judgement are satisfied against applicant, no strong motive has emerged against applicant for committing the crime in question, there is no evidence of last seen, , there is no independent witness of the recovery of alleged weapon of assault having blood stains, the same was not sent to FSL Laboratory to ascertain that blood stains on Danda is human blood or not, prima facie the nature of injuries sustained by the deceased could not have been caused by the alleged weapon i.e. Danda police report (charge-sheet) under 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 crystalized, yet inspite of above, no such circumstance could be pointed out by learned A.G.A. from the record necessitating the custodial arrest of applicant during the course of trial, the judgment of Apex Court in **Sumit Subhash Chandra Gangawal and another Vs. State¹¹³ of Maharashtra and another 2023 Live Law SC 373**, period of incarceration undergone by applicant, the clean antecedents of applicant, therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail but without expressing any opinion on the

merits of the case, applicant has made out a case for bail.

12. Accordingly, present application for bail is **allowed**.

13. Let the applicant-**Bhola Prasad** involved in aforesaid case crime number be released on bail 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) Applicant will not tamper with prosecution evidence.

(ii) 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) Applicant will not indulge in any unlawful activities.

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

14. 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 of applicant and send him to prison

Order Date :- 27.10.2023

YK