

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44899 of 2023

Applicant :- Manvendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Amit Daga, Anchal Kumar Rao

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Amit Daga, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Manvendra seeking his enlargement on bail in Case Crime No. 58 of 2023, under section 302, 504, 506 and 34 IPC, Police Station- Sakrar, District Jhansi during the pendency of trial.

At the very outset, learned counsel for applicant submits that named and charged accused Rajaram and Deshraj have already been enlarged on bail by this court vide order dated 10.10.2023. For ready reference, the order is reproduced herein under:

"1. Heard Mr. Harish Chandra Mishra, the learned counsel for applicants, the learned A.G.A. for State and Mr. Uday Shankar Tewari, Advocate holding brief of Mr. Dinesh Rai, the learned counsel representing first informant/opposite party-2.

2. Perused the record.

3. Instant application for bail has been filed by applicants-Rajaram and Deshraj seeking their enlargement on bail in Case Crime No. 58 of 2023 under Sections 302 504, 506, 34 I.P.C. Police Station-Sakrar, District-Jhansi, during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 23.04.2023, a prompt F.I.R dated 23.04.2023 was lodged by first informant Raja Bhaiya (father of the deceased) and was registered as Case Crime No. 58 of 2023 under Sections 302 504, 506, 34I.P.C. Police Station-Sakrar, District-Jhansi. In the aforesaid F.I.R. four persons namely Rajaram, Siyaram, Deshraj, Manvendra have been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that named accused armed with an axe, pharsa, lathi and danda with a common intention entered the field of first informant and thereafter they assaulted Karan Singh, the son of first informant on account of which he sustained various injuries on

his person and ultimately died.

6. After aforementioned F.I.R. was registered, 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 the same day i.e. 23.04.2023. In the opinion of the witnesses of inquest (panch witnesses), the nature of death of deceased was characterised as homicidal and cause of death of deceased was said to be ante mortem injuries caused by sharp edged weapon. Subsequent to above, the post-mortem of the body of the deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the body of deceased found following ante-mortem injuries on the body of deceased:

i. Head almost separated from main trunk, just attached through skin of neck over right side. All the structures of neck region dissected through this treated wound of size 29 cm. All the structures (trachea, Oesophagus, carotid of the neck region exposed through this wound.

ii. Lacerated wound of size 4 x 6 cm over it. Wrist joint causing separation of left hand from left upper limb, just hanging through skin attachment.

iii. Abrasion of size 4 x 2 cm over right wrist joint.

iv. Abrasion of size 3 x 2 cm over right lower limb, 10 cm below right knee joint.

7. In the opinion of Autopsy Surgeon, the cause of death of deceased was Haemorrhagic shock due to ante-mortem injury.

8. During course of investigation, Investigating Officer examined first informant and other witnesses namely S. O. Pradeep Tiwari, Smt. Sheela Devi, Antram, Smt. Neetu, Hargovind, Sujana, Jitendra, Anil, Parshuram, Arvind, Constable Deepak Pratap, Constable Ram, S.I. Ramendra Singh, Smt. Pushpa, Har Prasad, Constable Pooran Singh, Constable Ritesh Sahu and Dr. Amit Kumar Niranjana under Section 161 Cr.P.C. The witnesses so examined have substantially supported the F.I.R. One witness namely Hargovind is an eye witness of the occurrence. According to this witness named accused Siyaram was armed with Farsa. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of all the named accused is fully established in the crime in question. He therefore opined to submit a charge-sheet. Accordingly, Investigating Officer submitted the charge sheet dated 30.05.2023, whereby all the named accused have been charge sheeted under Section under Sections 302 504, 506, 34 I.P.C.

9. Learned counsel for applicants contends that though the applicants are named as well as 30.05.2023 yet they are liable to be enlarged on bail. He then contends that from perusal of the post mortem report of the deceased it is apparent that deceased had died on account of fatal injury sustained by the deceased. As per statement of eye witness of the occurrence namely Hargovind, named and charge sheeted accused Siyaram was armed with Farsa i.e. sharp edged weapon. On the above premise, it is thus urged that case of present applicants is clearly distinguishable from named and charge sheeted co-accused Siyaram as present applicants are alleged to be armed with lathi and danda only

10. Even otherwise applicants are men of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicants are in custody since 25.04.2023. As such they have undergone almost five and a half months of incarceration. Police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, therefore the entire evidence sought to be relied upon by the prosecution against applicants

stands crystallised. Upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. On the above premise, the learned counsel for applicants thus submits that applicants are liable to be enlarged on bail. In case applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

11. Per contra, the learned A.G.A. for State and the learned counsel for first informant have vehemently opposed the prayer for bail. They submit that since the applicants are named as well as charge-sheeted accused, therefore they do not deserve any indulgence by this Court. They further submit that criminality committed by named accused is joint and common. As such same is incapable of separation and segregation. As such no exception can be carved out in the case of present applicants. Applicants alongwith other charge sheeted accused have been charge sheeted under Section 34 I.P.C, therefore, there was common intention with the accused to commit the crime in question. No classification can be made with regard to the role of applicant in the crime in question. They therefore submit that no sympathy be shown by this Court in favour of applicants. However, they could not dislodge the factual and legal submissions urged by learned counsel for applicants with reference to the record at this stage.

12. Having heard the learned counsel for applicants, the learned A.G.A. for State, the learned counsel for first informant, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicants coupled with the fact that as per post mortem report of the deceased, the deceased has sustained four injuries on his person, out of four injuries, two were incised wound, the incised wound suffered by the deceased were caused by named/charge sheeted accused Siyaram as is clearly evident from the statement of eye witness Hargovind, applicants though named and charge sheeted accused are alleged to be armed with Lathi and Danda, no grievous and fatal injury on the person of the deceased was caused by present applicants, as such case of present applicants is clearly distinguishable from the named and charge sheeted co-accused Siyaram, police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted therefore the entire evidence sought to relied upon by the prosecution against applicants stands crystallised, 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 applicant during the pendency of trial, the judgement of Supreme Court in Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373 (Paragraph 5), the period of incarceration undergone by applicants, the clean antecedents of applicants, therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to present application for bail but without expressing any opinion on the merits of the case, applicants have made out a case for bail.

13. Accordingly, present application for bail is allowed.

14. Let the applicants- Rajaram and Deshraj involved in aforesaid case crime number be released on bail 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) Applicants will not tamper with prosecution evidence.

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

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

15. 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 applicants and send them to prison. "

On the basis of above premise, learned counsel for applicant submits that case of present applicant is similar and identical to aforesaid bailed out co-accused, as applicant is also said to be armed with Danda.

There is no such distinguishing feature on the basis of which case of present applicant can be so distinguished from aforesaid bailed out co-accused so as to deny him bail. He, therefore, contends that applicant is also liable to be enlarged on bail on the ground of parity. In case applicant is enlarged on bail he shall not misuse the liberty of bail and shall co-operate with the trial.

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 25.4.2023. As such, he has undergone more than ten months of incarceration. The 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 applicants 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 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. for State has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. From the person of applicant, a danda was recovered. As per F.S.L. report, blood stains were found on the danda. Since criminality committed by charge sheeted accused is joint and common as such, same is incapable of separation and saggregation. As such no exception can be carved out in the case of present applicant. Therefore, no sympathy be shown by this Court in favour of applicant. However, he 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 applicant, accusation made coupled with the fact that co-accused has already been enlarged on bail, case of present applicant is similar and identical to aforesaid bailed out co-accused, the learned A.G.A could not point out any such circumstance so as to distinguish the case of present applicant from bailed out co-accused so as to deny bail to applicant, clean antecedents of applicant, period of incarceration undergone, the 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 applicants stands crystalized, inspite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating custodial arrest of applicant during pendency of trial, therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present applicant for bail, but without making any comment on the merits of the case, applicant has made out a case for bail.

Accordingly, the bail application is **Allowed**.

Let the applicant **Manvendra**, 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 :- 26.10.2023

Arshad