

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45234 of 2023

Applicant :- Rinku Pasi

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinay Kumar, Mohitosh Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Vinay Kumar, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant-Rinku Pasi seeking his enlargement on bail in Case Crime No.182 of 2023, under Sections 302, 201, 120-B IPC, Police Station Kadadham, District Kaushambi, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 04.07.2023, a delayed first information report dated 08.07.2023 was lodged by first informant, namely, Amit Patel (father of the deceased), which was registered as Case Crime No.0182 of 2023, under Sections 302, 201, 120-B IPC, Police Station Kadadham, District Kaushambi. In the aforesaid F.I.R., one Maya has been nominated as named accused and one unknown person has also been arraigned as an accused.

At the very outset, the learned A.G.A. with reference to the recovery memo submits that on the pointing out of the applicant and co-accused Lavkush @ Gore following recoveries were made : (i) a piece of brick; (ii) shirt of Lavkush which was having blood stains; and (iii) a Gamchha of the deceased which also had blood stains. These articles were kept in a plastic bag and were recovered from a hut on the pointing of applicant and co-accused Lavkush. On the above premise, the learned A.G.A. thus urged that since the criminality committed by the named accused including present applicant is joint and common therefore, incapable of being separated or segregated. As such, no sympathy be shown by this Court in favour of applicant.

When confronted with above, the learned counsel for applicant submits that the recoveries were made on the joint pointing out of applicant as well as co-accused Lavkush. However, co-accused Lavkush has already been enlarged on bail by this Court vide order dated 05.10.2023 passed in Criminal Misc. Bail Application No.42453 of 2023 (Lavkush @ Gore Vs. State of U.P.). For ready reference, the order dated

05.10.2023 is reproduced herein-under :-

"By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 182 of 2023 at Police Station Kadadham District Kaushambi under Section 302, 201 and 120B I.P.C. The applicant is in jail since 22.07.2023.

The bail application of the applicant was rejected by the learned trial court on 05.08.2023.

The following arguments made by Shri Mohitosh Singh, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Ms. Sujata Chaudhary, learned AGA from the record, entitle the applicant for grant of bail:

1. Delay in lodgement of the F.I.R. in the facts and circumstances of this case is fatal to the prosecution case.
2. There was no cause for the first informant not to record a missing report since the deceased had disappeared in the evening of 4th of July.
3. The applicant was nominated belatedly by the brother of the deceased in his statement under Section 161 Cr.P.C. The said statement is based on suspicion and is unreliable. Suspicion howsoever grave, is no substitute for evidence.
4. There was no cause for the brother of the deceased not to inform the police about the animosity since he claims to be always in the of know of the issues.
5. As per the statement of brother of the deceased, the motive for death was the illicit relations of the deceased with one Maya. The applicant had no connection with either.
6. There is no direct evidence against the applicant. This is a case of circumstantial evidence.
7. Chain of incriminating circumstances against the applicant is not complete.
8. The applicant was not last seen with the deceased at a time proximate to the death of the latter.
9. No incriminating article has been recovered from the applicant.
10. Prosecution evidence does not connect the applicant with the crime.
11. The applicant does not have any criminal history apart from this case.
12. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- Luvkush @ Gore 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 below. The following conditions be imposed in the interest of justice:-

- (i) The applicant will not tamper with the evidence or influence any witness

during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted."

On the above premise, the learned counsel for applicant urged that the incriminating circumstances which are being pressed in opposition to the present application for bail also existed against co-accused Lavkush, who has already been enlarged on bail by this Court. He, therefore, contends that in view of above the applicant is also liable to be enlarged on bail on the ground of parity.

Learned counsel for the applicant contends that though applicant is a named/charge-sheeted accused yet he is liable to be enlarged on bail. The present case is a case of circumstantial evidence and, therefore, there is no eye-witness of the occurrence. According to the learned counsel for applicant, the complicity of an accused in a case based on circumstantial evidence is to be judged in the light of parameters laid down by the Supreme Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra AIR 1984 SC 1622**. However, in the present case none of the parameters laid down in the aforementioned judgement are satisfied against the present applicant up to this stage.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in jail since 27.07.2023. As such, he has undergone more than three months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. Up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. He, therefore, 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.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since the applicant is a charge-sheeted accused, therefore, no indulgence be granted by this Court in his favour. He further submits that since complicity of the applicant stands established in the crime in question on account of the recoveries made on the pointing of applicant therefore, he does not deserve any sympathy of this Court. 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, complicity of the accused, accusation made, nature and gravity of offence and coupled with the fact that the present case is a case of circumstantial evidence and therefore there is no eye-witness of the occurrence, an inference of guilt of an accused in a case based on circumstantial evidence can be inferred only in accordance with the parameters laid down by the Supreme Court in **Sharad Birdhichand Sarda (supra)**, up to this stage none of the parameters laid down in the aforementioned judgement is satisfied against the applicant, no strong motive or animus to commit the crime in question has emerged against the applicant, the only incriminating circumstance that has emerged against applicant is the recovery of certain articles detailed above on the joint pointing out of applicant and co-accused Lavkush, co-accused Lavkush has already been enlarged on bail, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet the learned A.G.A. could point out any such incriminating circumstance from the record necessitating the custodial arrest of the applicant during the pendency of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal and Another Vs. State of Maharashtra and Another 2023 LiveLaw (SC) 373 (paragraph 5)**, the clean antecedents of the applicant, the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but, without making any comments on the merits of the case, the applicant has made out a case for bail.

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

Let the applicant **Rinku Pasi**, be released on bail in the aforesaid case crime number 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) 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 :- 27.10.2023.
Rks.