

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45106 of 2023

Applicant :- Munna Singh @ Bhupendra Kumar Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Singh, Gyanendra Kumar Singh

Counsel for Opposite Party :- G.A., Ashok Kumar Mishra, Amar Nath Singh

Hon'ble Rajeev Misra, J.

1. Heard Mr. Ashok Kumar Singh, the learned counsel for applicant, the learned A.G.A. for State and Mr. Ashok Kumar Mishra, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Munna Singh @ Bhupendra Kumar Singh, seeking his enlargement on bail in Case Crime No. 211 of 2023, under Sections 302, 323, 506, 34 IPC, Police Station-Nagra, District-Ballia during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 01.07.2023, a delayed FIR dated 02.07.2023 was lodged by first informant-Umashankar Singh and was registered as Case Crime No. 211 of 2023, under Sections 308, 323, 506 IPC, Police Station-Nagra, District-Ballia. In the aforesaid FIR, 2 persons namely -(1) Munna Singh and (2) Pappu Pandey have been nominated as named accused whereas 2 unknown persons have also been arraigned as accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused armed with Lathi, Danda and Rod assaulted Kripashankar (Younger brother of the first informant) on account of which, he sustained injuries on his person and became unconscious.

6. It is apposite to mention here that the first informant is not an eye witness of the occurrence.

7. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. Unfortunately, the injured Kripashankar Singh succumbed to the injuries sustained by him while undergoing treatment. Consequently, the case was converted under Section 302 IPC. The inquest (*Panchayatnama*) of the body of deceased was conducted on 09.07.2023. In the opinion of the witnesses of inquest (*Panch witnesses*), the nature of death of deceased was categorized as homicidal and the cause of death of deceased was said to be the injuries sustained by deceased at the time of assault. 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 the deceased is Comma due to ante-mortem head injuries. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"30 stitches present over mid of forehead to 1 cm above right pinna (ear) membrane lacerated with huge heamotoma (semi water present) in over brain.

Sign of tracheotomy present covered with medical misnopause tape.

8. During course of investigation, Investigating Officer examined first informant and following witnesses namely (1) Hareram Singh (eye witness), (2) Shiv Govind Singh (eye witness), (3) Dharmatma Singh (eye witness), (4) Sudhakar Singh (eye witness), (5) Ashutosh Singh (eye witness), (6) Dinesh Singh (eye witness), (7) Sanjay Kumar (circumstantial witness), (8) Kalika Singh (circumstantial witness) (9) Ankush Singh (circumstantial witness) and (1) Nagendra Singh (circumstantial witness) under Section 161 Cr.P.C. In the statement of 2 of the witnesses namely Kalika Pandey and Ankush Kumar Singh, complicity of 2 of the named accused i.e. Munna Singh and Pappu Pandey as well as 2 other not named accused namely Kuber and Brijendra Singh @ Chhotu Singh surfaced in the crime in question. He, accordingly, submitted the charge sheet dated 01.08.2023 whereby Munna Singh, Pappu Pandey and not named accused Kuber and Brijendra Singh @ Chhotu Singh have been charge sheeted under Sections 302, 323, 506, 34 IPC.

9. Learned counsel for applicant contends that though applicant is a named and charge sheeted accused yet he is liable to be enlarged on bail. Referring to the post mortem report of the body of deceased, the learned counsel for applicant contends that the deceased sustained injury on his head and 30 stitches were present

on the head of deceased. General role has been assigned to all the accused. In the statement of the two witnesses namely Kalika Pandey and Ankush Kumar Singh who are said to be the eye witnesses of the occurrence. The role of causing fatal head injury on the body of deceased has not been attributed singularly to the present applicant.

10. It is next contended that the bail application of named and charge sheeted accused Pappu Pandey @ Sunil Kumar Singh has been rejected by this Court vide order dated 29.08.2023 passed in Criminal Misc. Bail Application No. 37988 of 2023 (Pappu Pandey @ Sunil Kumar Pandey Vs. State of U.P.). For ready reference, the order dated 29.08.2023 is reproduced hereinunder:-

"By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 211 of 2023 at Police Station Nagra, District Ballia, under Sections 302, 323, 506 IPC. The applicant is in jail since 06.07.2023.

The bail application of the applicant was rejected by learned trial court on 21.07.2023.

The applicant has been identified as the principal offender who inflicted the fatal injuries on the deceased. Postmortem report supports the prosecution case. There is an eye witness to the incident. The offence is grave. There is likelihood that the applicant committed the offence. At this stage, no case for bail is made out.

Without going into the merits of the case, the bail application is dismissed.

Considering the gravity of the offence, interest of justice will be served by directing the learned trial court to expedite the trial within a stipulated period of time.

The trial court is directed to conclude the trial within a period of one year from the date of receipt of a certified copy of this order. The learned trial court shall proceed with the hearing on a day to day basis to ensure that the above stipulated timeline of one year is strictly adhered to. All witnesses and counsels are directed to cooperate with the trial proceedings.

The trial court has also to be conscious of the rights of the accused persons and is under obligation of law to ensure that all expeditious, necessary and coercive measures as per law are adopted to ensure the presence of witnesses. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

The learned trial court shall issue summons by regular process as per Section 62 Cr.P.C. and also by registered post as provided under Section 69 Cr.P.C. to expedite the trial.

The learned trial court shall promptly take out all strict coercive measures against all the witnesses in accordance with law who fail to appear in the trial proceeding. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

The police authorities shall ensure that warrants or any coercive measures as per law taken out by the learned trial court to ensure that the attendance of the witnesses are promptly executed.

The Superintendent of Police, Ballia shall file an affidavit before the trial court on the date fixed regarding status of execution of the warrants/service of summons taken out by the learned trial court.

In case there is a failure on part of the police authorities to execute the warrants or other coercive measures, the Superintendent of Police, Ballia shall state the reasons for the same in the said affidavit and also show the steps taken to execute the warrants. The Superintendent of Police, Ballia shall simultaneously inform the Additional Director General of Police (ADG) Varanasi Zone, about the aforesaid failure of the police authorities in the first instance to execute the warrants and coercive measures issued by the learned trial court. If required, the Additional Director General of Police (ADG) Varanasi Zone, may issue an appropriate directions to ensure that the warrants issued are promptly executed by the learned trial court.

The delay in execution of warrants and consequent absence of witnesses is one of the principal causes of delays in criminal trials and has to be addressed effectively by all stakeholders.

The trial judge shall submit a fortnightly report on the progress of trial and the steps taken to comply with this order to the learned District Judge.

A copy of this order be communicated to the learned trial judge through the learned District Judge, Ballia by the Registrar (Compliance) by FAX."

11. However, subsequent to above order dated 29.08.2023 not named but charge sheeted co-accused Brijendra Singh @ Chhotu Singh has been enlarged on bail vide order dated 11.10.2023 passed in Criminal Misc. Bail Application No. 43321 of 2023 (Brijendra Singh @ Chhotu Singh Vs. State of U.P.). For ready reference, the order dated 11.10.2023 is extracted hereinunder:-

"1. वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र, आवेदक बृजेन्द्र सिंह उर्फ छोटू सिंह की ओर से मु०अ०स० 211/2022, अन्तर्गत धारा 302/323/506/ 34 भा०द०वि०, थाना नगरा जिला बलिया में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

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

3. आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि आवेदिका को इस प्रकरण में गलत एवं फर्जी ढंग से झूठा फंसाया गया है, उसने कथित अपराध कारित नहीं किया है। आवेदक नामजद अभियुक्त नहीं है। प्रथम सूचना रिपोर्ट काफी विलम्ब से दर्ज करायी गयी है तथा

विलम्ब का कोई उचित स्पष्टीकरण नहीं दिया गया है। आवेदक का नाम चश्मदीद गवाह धर्मात्मा सिंह के बयान में आया जिसमें चश्मदीद गवाह धर्मात्मा ने सभी अभियुक्तों को एक राय होकर लाठी मारने का आरोप लगाया है किसी भी अभियुक्त की मुख्य भूमिका नहीं बतायी इसप्रकार तथाकथित घटना को कारित करने में आवेदक की सामान्य भूमिका है। आवेदक निर्दोष है तथा वह इस प्रकरण में दि० 06.07.2023 से कारागार में निरुद्ध है इसलिए आवेदक को जमानत पर छोड़ दिया जाय।

4. 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।

5. 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

6. अतः वाद के गुण दोष पर बिना कोई टिप्पणी किए हुए आवेदिका 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 करेगी, वह परीक्षण के दौरान बिना कोई अनावश्यक स्थगन लिए नियत तिथि पर न्यायालय में उपस्थित होगा तथा परीक्षण में ईमानदारी 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।"

12. Another not named but charge sheeted co-accused Kuber has also been enlarged on bail vide order 31.10.2023 passed in Criminal Misc. Bail Application No. 44428 of 2023 (Kuber Vs.f State of U.P.). For ready reference, the order dated 30.10.2023 is reproduced hereinunder:-

"1. वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र, आवेदक कुबेर की ओर से मु०अ०स० 211/2023, अन्तर्गत धारा 302/ 323/506/ 34 भा०द०वि., थाना नगरा, जिला बलिया में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

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

3. 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, आवेदक नामजद अभियुक्त नहीं है। प्रथम सूचना रिपोर्ट काफी विलम्ब रसे दर्ज करायी गयी है तथा विलम्ब का कोई उचित स्पष्टीकरण नहीं दिया गया है। आवेदक का नाम चश्मदीद गवाह धर्मात्मा सिंह के बयान में आया जिसमें चश्मदीद गवाह धर्मात्मा ने सभी अभियुक्तों को एक राय होकर लाठी मारने का आरोप लगाया है किसी भी अभियुक्त की मुख्य भूमिका नहीं बतायी। उनका यह भी कहना है कि इस प्रकरण में सह अभियुक्त बृजेन्द्र सिंह उर्फ छोटू सिंह की जमानत, जमानत आवेदन पत्र सं. 43321 सन 2023 में इस न्यायालय की इसी न्यायपीठ के आदेश दि. 11.10.2023 द्वारा स्वीकार की जा चुकी है आवेदक का केस भी उक्त सहअभियुक्त के समान है, इसलिए आवेदक भी सह अभियुक्त से समानता के आधार पर जमानत पाने का अधिकारी है। आवेदक निर्दोष है तथा वह इस प्रकरण में दि० 06.07.2023 से कारागार में निरुद्ध है इसलिए आवेदक को जमानत पर छोड़ दिया जाय।

4. 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।

5. 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।

6. अतः वाद 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 ईमानदारी 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।"

13. With reference to above, the learned counsel for applicant contends that the Court while granting bail to not named but charge sheeted co-accused Brijendra Singh @ Chhotu Singh and Kuber is not taken into consideration the earlier bail order dated 29.08.2023 yet the applicant is liable to be enlarged on bail. The said submission derives its sustenance from the fact that the role of

assault is assigned to all the charge sheeted accused. He, therefore, contends that there is no such distinguishing feature on record on the basis of which, the case of present applicant can be distinguished from other charge sheeted but bailed out co-accused Brijendra Singh @ Chhotu Singh and Kuber so as to deny bail to applicant. As such, the applicant is also liable to be enlarged on bail on the ground of parity.

14. 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 06.07.2023. As such, he has undergone more than 4 and 1/2 months 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 applicant stands crystallized. However, up to this stage, no such 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.

15. 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 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 applicant with reference to the record at this stage.

16. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that the charge sheeted co-accused Brijendra Singh @ Chhotu Singh and Kuber have already been enlarged on bail, the role of assault upon deceased has been assigned to all the charge sheeted accused as per the statement of two eye witnesses namely Kalika Pandey and Ankush Kumar Singh, the learned A.G.A. and the learned counsel representing first informant could not point out any such circumstance from the record distinguishing the case of present applicant from charge sheeted but bailed out co-accused Brijendra Singh @ Chhotu Singh and Kuber, the clean antecedents of applicant, the period of incarceration undergone, the police report 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 crystallized, yet in spite

of above, the learned A.G.A. and the learned counsel representing first informant could not point out any such circumstance from the record 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 representing first informant in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

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

18. Let the **applicant-Munna Singh @ Bhupendra Kumar Singh**, 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/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.

19. 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 :- 1.12.2023

Vinay