

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46290 of 2023

Applicant :- Bhedu Banjara

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinod Kumar Yadav, Mahendra Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Vinod Kumar Yadav, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Bhedu Banjara, seeking his enlargement on bail in Case Crime No. 386 of 2020, under Section 396 IPC, Police Station-Karhal, District-Mainpuri during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 25.12.2020, a prompt FIR dated 25.12.2020 was lodged by first informant-Ranjeet Kumar and was registered as Case Crime No. 386 of 2020, under Section 460 IPC, Police Station-Karhal, District-Mainpuri. In the aforesaid FIR, an unknown person has been arraigned as solitary accused.

5. The gravamen of the allegations made in the FIR is to the effect that certain unknown persons entered the house of first informant in the night of 24/25.12.2020. Subsequently, alarm was raised by father and uncle of the first informant. Frightened with above, the unknown persons fired gun shot at the uncle of the first informant and further assaulted the father of the first informant on his head by a Danda. Both the injured were seriously injured and taken to the P.G.I., Saifai. However, the uncle of the first information namely - Ram Naresh ultimately succumbed to the gun shot injury sustained by him.

6. 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. The inquest

(Panchayatnama) of the body of deceased was conducted on 25.12.2020. 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 was said to be gun shot injury. Thereafter, the post mortem of the body of deceased was conducted. In the opinion of the Autopsy Surgeon, the cause of death of deceased was Comma as a result of ante-mortem injury. The Autopsy Surgeon, who conducted the autopsy of body of deceased found following ante-mortem injuries on the body of deceased:-

"1. Firearm wound of entry 0.7 x 0.7 cm in size just below outer corns of Rt. eye brow. Margins inverted & Charned, blackning present around margin tattooing present around wound of entry in an area of 06 cm x 07 cm. Rt. eye lacerated.

2. Traumatic swelling on bailt of head Lt. side close to occipital preferences on dissection underlying skull bone fractured and breath scalp a metalic bullet recovered.

3. A Lacerated wound 02.5 cm x 0.5 cm size on Lt. side of forehead."

8. During course of investigation, Investigating Officer examined first informant. He, thereafter, recorded the statements of 2 other witnesses namely Irfan Banjara and Aman Khan Banjara. As per the statements of the aforesaid witnesses, the complicity of the applicant also emerged in the crime in question. The aforesaid witnesses were also implicated as accused in the crime in question. However, the role of causing the fatal gun shot injury to the deceased is assign to accused Salman. Accordingly, applicant was arrested on 01.01.2021. From the person of applicant, a 0.315 bore country made pistol with 2 live cartridge and Rs. 240/- was recovered. 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 alone is established in the crime in question. He, accordingly, submitted the charge sheet dated 25.04.2021 whereby, 3 persons namely (1) Irfan Banjara @ Sohail, (2) Salman Banjara and (3) Aman Khan Banjara have been charge sheeted under Section 396 IPC. This was followed by first supplementary charge sheet dated 01.07.2021 whereby 2 persons namely (1) Asif Banjara and (2) Rafeeq Banjara have been charge sheeted under Section 396 IPC. Ultimately, Investigating Officer submitted second supplementary charge sheet dated 14.02.2022 whereby 3 persons namely (1) Mitti @ Sharif Banjara, (2) Bhendu Banjara and (3) Dilkush Banjara have been charge sheeted under Section 396 IPC in which, 2 persons namely (1) Mitti @ Sharif Banjara and (2) Dilkush Banjara have been absconded.

9. At the very outset, the learned counsel for applicant contends that the complicity of applicant in the crime in question has emerged in the confessional statement of accused Irfan Banjara and Aman Khan Banjara. Though from the person of applicant, recovery of 0.315 bore country made pistol with 2 live cartridge and Rs. 240/- was made. However, the same shall not be fatal to the case of applicant as the role of causing fatal gun shot injury to the deceased is assigned to co-accused Salman, who has already been enlarged on bail by this Court vide order dated 19.07.2023 passed in Criminal Misc. Bail Application No. 43538 of 2021 (Salman Khan Vs. State of U.P.). For ready reference, the order dated 19.07.2023 is reproduced hereinunder:-

"1. Heard learned counsel for the applicant and learned A.G.A for the State.

2. Supplementary affidavit filed today is taken on record.

3. FIR was lodged against unknown accused regarding commission of offence of dacoity and murder.

4. Counsel for the applicant submits that subsequently he has been implicated in this case along with 9 other co-accused. He has submitted that the applicant has criminal history of 21 cases and therefore he was implicated in this case by the police. No incriminating recovery was made from him. Only two prosecution witnesses out of 10 witnesses of fact have been examined before the trial Court. Co-accused persons, namely, Irfan Banjara @ Suhail, Mitti @ Sharif Banjara, Rafiq, Aasif and Aman Khan, have been enlarged on bail by vide Criminal Misc. Bail Application Nos. 43566 of 2021, 58477 of 2022, 32571 of 2021, 30764 of 2021 and 14211 of 2021. The applicant is in jail since 04.01.2021 and has no criminal history to his credit.

5. On the other hand learned A.G.A has opposed the prayer for bail.

6. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

7. Let the applicant, Salman Khan, involved in Case Crime No. 386 of 2020, under Section- 460 IPC, Police Station- Karhal, District- Mainpuri, 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) 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. is issued and the 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

8. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

9. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

10. Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of one year.

11. Registrar (compliance) is directed to communicate this order to the trial Court for necessary compliance within ten days."

10. Similarly, another co-accused Rafiq has been enlarged on bail by this Court vide order dated 21.09.2022 passed in Criminal Misc. Bail Application No. 32571 of 2021 (Rafiq Vs. State of U.P.). For ready reference, the order dated 21.09.2022 is extracted hereinunder:-

"Heard learned counsel for the applicant and learned A.G.A. for the State and perused the material on record.

By means of this application, the applicant, Rafiq, who is involved in Case Crime No. 386 of 2020, under Section 396 IPC, Police Station Karhal, District Mainpuri and is in jail since 07.06.2021, is seeking enlargement on bail during the trial.

It is submitted by learned counsel for the applicant that similarly placed co-accused, Irfan Banjara @ Suhail, has already been enlarged on bail by this Court by order dated 31.3.2022 passed in Criminal Misc. Bail Application No. 43566 of 2021. He has further submitted that since the role of the applicant is identical to that of co-accused, Irfan Banjara @ Suhail, who has already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity.

prayer for bail has vehemently been opposed by learned A.G.A.

Considering the submissions made by learned counsel for the applicant as well as learned A.G.A., this Court is of the view that the applicant has made out a case for grant of bail on the ground of parity.

In view of the above, let the applicant be released on bail on his executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the court concerned with the following conditions :-

- 1. The applicant will continue to attend and co-operate in the trial pending before the court concerned on the date fixed after release.***
- 2. He will not tamper with the witnesses.***
- 3. He will not indulge in any illegal activities during the bail period.***

It is further directed that the identity, status and residence proof of the sureties be verified by the authorities concerned before he is accepted.

In case of breach of any of the above conditions, the trial court will be at liberty to cancel the bail.

Order Date :- 21.9.2022"

11. Learned counsel for applicant further contends that another co-accused Irfan Banjara @ Suhail has already been enlarged on bail by this Court vide order dated 31.03.2022 passed in Criminal Misc. Bail Application No. 43566 of 2021 (Irfan Banjara @ Suhail Vs. State of U.P.). For ready reference, the order dated 31.03.2022 is extracted hereinunder:-

"Heard learned counsel for the applicant, learned AGA for the State and perused the record.

The instant bail application has been filed on behalf of the applicant with a prayer to release him on bail in Case Crime No. 386 of 2020, under Section 396 IPC, Police Station Karhal, District Mainpuri, during pendency of trial.

Submission of learned counsel for the applicant is that the applicant has been falsely implicated in the present case with ulterior motive. He did not commit any offence as alleged and has no concern whatsoever with it. It is further submitted that no motive is assigned to the applicant to commit the alleged offence as also nothing incriminating material was recovered from applicant's possession or his pointing out. The alleged recovery is false and planted as there is no independent eye witness of the alleged recovery. The applicant has history of nine criminal cases, which has been properly explained in paragraph-4 of the supplementary affidavit. Learned counsel for the applicant has drawn the attention of the Court to the bail orders of co-accused persons Aasif and Aman Khan passed in Criminal Misc. Bail Application Nos. 30764 of 2021 and 14211 of 2021. Copy of said orders are on the record as Annexure SA-2 to the supplementary affidavit. He seeks parity. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length. It has been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required. The applicant is languishing in jail since 02.1.2021. He undertakes that he will not misuse the liberty, if granted, therefore, he may be released on bail.

Learned counsel appearing for the opposite party vehemently opposed the prayer.

Having heard the submissions of learned counsel of both sides, nature of accusation and severity of punishment in case of conviction, nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformative theory of punishment and considering larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of Dataram Singh v. State of U.P. and another, (2018) 3 SCC 22, without expressing any view on the merits of the case, I find it to be a case of bail.

Considering the facts and circumstances of the case, I find it to be a fit case for bail. Let the applicant ? Irfan Banjara alias Suhail involved in the aforementioned crime 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:-

(1) The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, or otherwise during the investigation or trial;

(2) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. He 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 of the Indian Penal Code;

(3) The applicant shall remain present, in person, before the trial court on

the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C.; and

(4) 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. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, the trial court shall initiate proceedings against him, in accordance with law under Section 174-A of the Indian Penal Code.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case.

Order Date :- 31.3.2022"

12. He, therefore, submits that the case of present applicant is on better footing than co-accused Salman. According to the learned counsel for applicant, there is no such distinguishing feature on the basis of which, the case of present applicant could be so distinguished from co-accused-Salman and other co-accused so as to deny him bail. He, therefore, submits that in view of above and for the facts and reasons recorded in the bail orders of aforementioned co-accused, applicant is also liable to be enlarged on bail on the ground of parity.

13. 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 01.01.2021. As such, he has undergone more than 2 years and 10 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.

14. Per contra, the learned A.G.A. has opposed the prayer for bail. 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.

15. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made and complicity of accused coupled with the fact that the charge sheeted accused namely Salman, Rafiq and Irfan Banjara @ Suhail have already been enlarged on bail, the role of causing the fatal gun shot injury has been assigned to co-accused Salman, who has already been enlarged on bail, the learned A.G.A. could not point out any such distinguishing feature on the basis of which, the case of present applicant could be so distinguished from aforementioned bail out co-accused so as to deny bail to the present applicant, the clean antecedents of the 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. 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. 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.

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

17. Let the **applicant-Bhedu Banjara**, be released on bail in the aforesaid case crime number on his furnishing a very heavy personal bond and two very heavy 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.

18. 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 :- 2.11.2023

Vinay