

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46207 of 2023

Applicant :- Raja @ Nahne

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Yadav, Sita Ram Sharma

Counsel for Opposite Party :- G.A.

and

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41048 of 2023

Applicant :- Ajay

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Yadav, Sita Ram Sharma

Counsel for Opposite Party :- G.A., Ajay Kumar Pandey, Raghubir Singh

and

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46150 of 2023

Applicant :- Suraj

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Yadav, Sita Ram Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Supplementary affidavits filed by learned counsel for applicants in all the bail applications in Court today are taken on record.
2. Heard Mr. Sita Ram Sharma, the learned counsel for applicants, the learned A.G.A. for State and Mr. Ajay Kumar Pandey and Mr. Raghubir Singh, the learned counsel for first informant.
3. Perused the Court.
4. These applications for bail have been filed by applicants-Raja @ Nahne, Ajay and Suraj seeking their enlargement on bail in Case

Crime No. 505 of 2023 under Sections 147, 148, 302, 323, 34 I.P.C., Police Station-Tajganj, District- Agra, during the pendency of trial.

5. Record shows that in respect of an incident, which is alleged to have occurred on 14.06.2023, a delayed F.I.R. dated 15.06.2023, was lodged by first informant-Dev Kumar (brother of the deceased) and was registered as Case Crime No. 505 of 2023 under Sections 147, 148, 302, 323, 34 I.P.C., Police Station-Tajganj, District- Agra, . In the aforesaid F. I.R., nine persons namely Prahalad, Gyani, Raja @ Nanhe (applicant herein) Soniya, Ajay (applicant herein), Neelam, Meera, Anupam and Suraj (applicant herein) have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that named accused armed with Lathi, Danda, brick and stones formed an unlawful assembly, came to the house of the first informant assaulted the brother of the first informant namely, Rajan Singh on account of which he sustained injuries on his person. Subsequently, he died. Shakuntla Devi mother of first informant came to intervene and save her son but she also sustained injury.

7. After aforementioned F.I.R. 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. 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 injuries sustained by the deceased on his person. 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 deceased, the cause of death of deceased was comma as a result of ante-mortem injury. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"i. A incised wound present on Lt. parietal region 3 x 1 cm, 12 cm from Lt. ear and 15 cm from Lt. eye brows..

II. Multiple abrasion present Lt. lat. aspect of neck 10 x 8 cm.

iii. Fracture seen in Lt. parietal base & Lt. frontal bone.....

8. Injured Shakuntla Devi, as per her Medico Legal Examination Report, has sustained following injuries:

- i. Hard dark brown scalp abrasion 2 cm x 05 cm upper part pinna of left ear.
- ii. Blunt contusion 2 cm x 1 cm back of pinna of left ear.
- iii. Blunt contusion 2cm x 2 cm left..... area just behind left ear.
- iv. T.S. 4cm x 3 cm left side head just above left ear.....
- v. left side face with both jaw.

9. During course of investigation, Investigation Officer examined the first informant and other witnesses under Section 161 Cr.P.C. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of onlythree of the named accused namely Raja @ Nanhe, Ajay and Suraj is established in the crime in question. Accordingly, he submitted the charge sheet dated 20.09.2023 whereby aforementioned named accused have been charge sheeted under Sections 147, 148, 302, 323, 34 I.P.C. whereas the other named accused have been exculpated.

10. Learned counsel for applicants submits that though the applicants are named as well as charge sheeted accused yet they are liable to be enlarged on bail. The deceased has sustained injuries on his person. However, the author of the injuries so

sustained by the deceased has not been specified in the F.I.R. nor identified in the statements of witnesses examined under Section 161 Cr.P.C. He therefore submits that general allegation of assault has been levelled against all the named accused. Occurrence has taken place in the night and there is no source of light to identify the accused. As many as 9 persons has been nominated in the F.I.R. out of which, only three have been charge-sheeted. As such, the prosecution case is *frima facie* false. Applicants are therefore liable to be enlarged on bail.

11. Even otherwise applicants are men of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicants Raja @ Nanhe and Suraj are in custody since 26.06.2023. As such, they have undergone more than five months of incarceration. Applicant Ajay is in custody since 10.07.2023. As such, he has undergone more than four 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 applicants stands crystallised. Upto this stage, no such circumstance has emerged on record necessitating the custodial arrest of applicants during the pendency of trial. He therefore submits that applicants are liable to be enlarged on bail. In case the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

12. 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-sheet accused, therefore they do not deserve any indulgence by this Court. It is next contended that though criminality committed by named and charge sheeted accused i.e.

applicants is general and common therefore same is common. Consequently, the same is incapable of separation or segregation. As such, no exception can be carved out in the case of applicants. They therefore submit that no sympathy be shown by this court in favor of applicants. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

13. 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 the occurrence has taken place in the night, there was no such source of light on the basis of which occurrence could have been properly seen or the accused could be identified, though there are nine persons named in the F.I.R. but only three persons have been charge-sheeted, the same prima-facie points at the inherent fallacy in the prosecution case, general role has been assigned to charge-sheeted accused inasmuch as the author of the injuries sustained by the deceased has not been specified in the F.I.R. nor in the statements of the witnesses examined under Section 161 Cr.P.C., the clean antecedents of applicants period of incarceration undergone, 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 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 course of trial, therefore irrespective of the objections raised by learned A.G.A. and the learned counsel for first informant in

opposition to the present applications for bail but without expressing any opinion on the merits of the case, applicants have made out a case for bail.

14. Accordingly, present bail applications are **allowed**.

15. Let the applicants-**Raja @ Nahne, Ajay and Suraj** involved in aforesaid case crime number be released on bail on their furnishing a personal bond each 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.

16. 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.

Order Date :- 7.12.2023

YK