

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46355 of 2023

Applicant :- Rakhi

Opposite Party :- State of U.P.

Counsel for Applicant :- Sundeep Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Sundeep Shukla, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Rakhi seeking her enlargement on bail in Case Crime No.410 of 2023, under Sections 364, 302, 120-B, 34 IPC, police station Muradnagar, district Ghaziabad, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 02.08.2023, a delayed FIR dated 04.08.2023 was lodged by first informant, namely, Manju Shah (sister of the deceased) and was registered as Case Crime No.0410 of 2023, under Section 302, 120-B IPC, police station Muradnagar, district South (Commissionerate Ghaziabad). In the aforesaid FIR, three persons, namely, Amit Jatav (brother-in-law of Bunty); Rakhi (applicant herein) and Bunty have been nominated as named accused, whereas some un-known persons have also been arraigned as accused.

The gravamen of the allegations made in the first information report is to the effect that Ragini @ AaroHi (sister of the first informant), who was working in the Real Estate Company of Banti Singh, on 02.08.2023 at around 23.48 hours left home by disclosing that Rakhi Mam has come. Amit Jatav, brother of Rakhi, has come to pickup her. The FIR further records that first informant herself saw Amit Jatav. Rakhi Mam is the wife of Bunty. Thereafter, the sister of the first informant Ragini @ AaroHi left home in a white Car. However, she did not return home. Even after a hectic search her whereabouts could not be located. On 03.08.2023, an information was received by the police from one Deepak that an unknown female dead body is lying under the bridge near Hindon River which comes under Muradnagar police station. Thereafter, the dead body was identified as that of Ragini @ AaroHi, sister of the first informant.

After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. The dead body of deceased was recovered. 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 fire-arm injuries. Thereafter, the 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 hemorrhage and shock due to ante-mortem gunshot injury.

Some of the articles recovered from the body and samples taken from the body of deceased were sent for chemical examination to FSL laboratory. Thereafter, Investigating Officer examined the first informant. However, the complicity of applicant did not surface in this statement. The second statement of first informant was recorded on 05.08.2023, wherein the complicity of present applicant emerged. Thereafter, the Investigating Officer examined the following witnesses and recorded their statements under Section 161 CrPC : Nikhil Sony (brother-in-law of first informant); Brijesh Kumar (independent witness); Manohar (brother of deceased); Anuj Rahi; Nitin Kumar; Deepak Kumar and Rinku. Thereafter, Rakhi (applicant herein) along with Amit Kumar, Ankur Singh, Karan @ KP and Bunty Singh were arrested on 06.08.2023. The vehicle which was used for carrying the deceased from the house of first informant was also recovered. It is alleged that the applicant was seen sitting in the said vehicle along with other accused on the front bucket seat of said Car. Thereafter, the confessional statement of the accused were recorded.

Learned counsel for applicant submits that the complicity of applicant in the crime in question has appeared in the confessional statement of co-accused Amit Kumar, Karan @ KP, Ankur Singh and Bunty Singh. The role of causing the fatal gun-shot injury was assigned to co-accused Amit Jatav brother of present applicant Rakhi, whereas the role of conspiracy was assigned to present applicant. Recovery of country made pistol of .312 bore was made from accused Amit Jatav along with two live cartridges. As per the confessional statement of applicant the deceased had developed illicit relations with the husband of the applicant. It was on account of above that applicant was abused many a times by her husband in front of the deceased. Subsequent to above, Investigating Officer arrested two other persons, namely, Sumit Kumar @ Sumit Raj and Ramu @ Akash. In the confessional statement of these two accused, the complicity of applicant has also surfaced. On the basis of above and other material collected by Investigating Officer, during the course of investigation, he came to the conclusion that complicity of applicant along with aforementioned accused is established in the crime in question. Accordingly, he submitted the charge-sheet dated 27.09.2023, whereby aforementioned accused have been charge-sheeted. The details of the charging Sections of each of the accused are as follows : Rakhi (applicant herein) has been charge-sheeted under Sections 302, 364, 120-B, 34 IPC; co-accused Amit Kumar has been charge-sheeted under Sections 147, 149, 364, 302, 201, 34 IPC and Section 3/25/27 Arms Act; co-accused Ankur Singh, Karan @ K.P., Ramu @ Akash and Sumit Kumar @ Sumit Raj have been charge-sheeted under Sections 147, 149, 364, 302, 201, 34 IPC; and co-accused Banti Singh has been charge-sheeted under Section 212 IPC.

Learned counsel for applicant contends that though the applicant is a named/charge-sheeted yet she is liable to be enlarged on bail. The applicant is a lady therefore she is entitled to the benefit of provisions contained in proviso to Section 437 CrPC. 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 examined in the light of parameters laid by the Supreme Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra AIR 1984 SC 1622**. However, up to this stage, none of the parameters laid down in the aforementioned judgement is satisfied against the applicant. The only incriminating circumstance that has emerged in the present case against applicant is confessional statement of co-accused Amit Kumar, Ankur Singh Karan @ KP, Bunty Singh two other witnesses Sumit Kumar @ Sumit Raj and Ramu @ Akash that the present applicant was found sitting in the front bucket seat of the vehicle which was used in the commission of crime and thereafter recovered by the police and that applicant is the conspirator of the crime. On the above premise, the learned counsel for applicant contends that confessional statement of an accused is not admissible in evidence by virtue of the prohibition contained in Sections 25/26 of the Indian Evidence Act. No recovery has been made on the pointing of applicant. Apart from above, the other incriminating circumstance that has emerged against applicant is that deceased was in relationship with the husband of applicant. As such, applicant is alleged to be the conspirator of the crime in question. However, according to the learned counsel for applicant, conspiracy is a closed door affair and therefore subject to trial evidence.

Even otherwise, applicant is a woman of clean antecedents having no criminal history to her credit except the present one. Applicant is in custody since 06.08.2023. As such, she has undergone more than two and half 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 the applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant. He, therefore, contends that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, she shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named/charge-sheeted accused, therefore, she does not deserve any indulgence by 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, nature and gravity of offence, evidence, complicity of the accused, accusation made 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, the

guilt 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 (supra)**, up to this stage, none of the parameters laid down in the aforementioned judgement is satisfied against the present applicant, there is no recovery on the pointing of applicant or from the person of applicant, no direct motive is alleged with the applicant to commit the crime in question, as per the material collected by Investigating Officer no animus can be gathered against applicant for committing the crime in question, the applicant being a lady therefore she is entitled to the benefit of provisions contained in proviso to Section 437 CrPC, the only incriminating circumstance that has emerged against the applicant is that applicant was seated on the front bucket seat of the said vehicle in which the deceased went from home of the first informant to some place, consequently along with co-accused name of the applicant has surfaced in the crime in question in the confessional statement of co-accused Amit Kumar, Ankur Singh, Karan @ KP, Bunt Singh as well as two witnesses, namely, Sumit Kumar @ Sumit Raj and Ramu @ Akash, in view of the prohibition of Sections 25/26 of the Indian Evidence Act the said confession cannot be utilized against the applicant, 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 in spite of above the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of the applicant during the course of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra 2023 Live Law (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 **Rakhi**, involved in aforesaid case crime number, be released on bail on her furnishing a personal bond with 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 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 her counsel. In case of her absence, without sufficient cause, the trial court may proceed against her under section 229-A I.P.C.

(iii) In case, the applicant misuses the liberty of bail during trial and in

order to secure 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 her, 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 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 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.

Rks.