

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46162 of 2023

Applicant :- Rajveer Singh

Opposite Party :- State Of Up Thro Principal Secretary Gov Of Up At Lucknow

Counsel for Applicant :- Rajesh Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ajendra Kumar, Advocate, holding brief of Mr. Rajesh Pratap Singh, 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-Rajveer Singh, seeking his enlargement on bail in Case Crime No. 164 of 2023, under Sections 302, 506 IPC, Police Station-Bagwala, District-Etah during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 10.07.2023, a delayed FIR dated 11.07.2023 was lodged by first informant-Ajab Singh (brother of the deceased) and was registered as Case Crime No. 164 of 2023, under Sections 304, 506 IPC, Police Station-Bagwala, District-Etah. In the aforesaid FIR, 3 persons namely (1) Vishram Singh, (2) Durgesh and (3) Rajveer Singh (applicant herein) have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused assaulted Munnalal (brother of first informant) with Lathi and Danda on account of which, he sustained injuries. The FIR further records that the injured was taken to the hospital from where he was referred to Medical College, Agra but ultimately, he succumbed to the injuries sustained by him while being taken to Medical College, Agra.

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. 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 inflicted upon deceased by Lathi and Danda. Thereafter, 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 shock and hemorrhage as a result of ante-mortem injuries. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. Traumatic swelling on the lateral wall of left hemithorax of size 12 x 8 cm.

2. On cut section underlying ribs from 10th to 12th freetile caving breach of left lung.

3. About 300 ml. free and clotted blood present in thorax cavity."

7. During course of investigation, Investigating Officer examined various witnesses namely - (1) Yadram (eye witness), (2) Gajraj Singh (eye witness), (3) Gaurav (eye witness), (4) Pramod Kumar and (5) Veeresh Kumar under Section 161 Cr.P.C. Out of the aforesaid witnesses, 3 witnesses namely - (1) Yadram, (2) Gajraj and (3) Gaurav are said to be eye witnesses of the occurrence. Aforementioned witnesses in their statement before Investigating Officer under Section 161 Cr.P.C. have been attributed general role to all the accused. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of all the named accused is established in the crime in question. Accordingly, Investigating Officer submitted the charge sheet dated 27.08.2023 whereby all the named accused including applicant have been charge sheeted under Section 302, 506 IPC.

8. Learned counsel for applicant contends that though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. The occurrence giving rise to present criminal proceedings has occurred at the spur of the moment on account grave and sudden provocation. There is no calculated *mens rea* with the applicant to commit the crime in question nor the same is the outcome of any pre-planned act of the applicant. By virtue of above, the crime in question shall be covered under the 4th exception to Section 300 IPC. As such, offence complained of shall amount to culpable homicide not amounting to murder. Attention of Court was then invited to the post motem report of the

body of deceased and on basis thereof, he submits that the deceased was not assaulted with any sharpened edged weapon or any fire arm. The deceased sustained injuries, however, there is nothing on record to show that the injuries sustained by the deceased were either grievous or fatal. As per the statement of the eye witnesses of the occurrence namely (1) Yadram, (2) Gajraj and (3) Gaurav, general role has been attributed to all the accused. As such, the author of the injury no. 2 sustained by the deceased remains unexplained up to this stage. On the above premise, he, therefore, contends that applicant is liable to be enlarged on bail.

9. Applicant has criminal history of 4 cases. However, the same has been sufficiently explained in paragraph 3 of the supplementary affidavit. Referring to the three Judges Bench judgment of Supreme Court in **Brijmani Devi Vs. Pappu Kumar and Another, (2022) 4 SCC 497**, the learned counsel for applicant submits that an accused cannot be denied bail simply on the ground of criminal history. Applicant is in jail since 16.08.2023. As such, he has undergone more than 2 months of incarceration. 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. However, up to this stage, no such incriminating 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.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. 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.

11. 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, complicity of accused and coupled with the fact that present case is a case of grave and sudden provocation, there is no calculated *mens rea* with the applicant to commit the crime in question nor there is any material on record to show that the occurrence has occurred on account of a pre-planned act of the accused-applicant, the author of the injury no. 2 has not been identified, as such, general role has been assigned to all the named/charge sheeted accused, the explained

criminal history of the applicant, the three judges Bench judgment of Supreme Court in **Brijmani Devi (Supra)**, 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, the judgment of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), 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.

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

13. Let the **applicant-Rajveer 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.

14. 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 :- 1.11.2023

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