

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46593 of 2023

Applicant :- Raman

Opposite Party :- State of U.P.

Counsel for Applicant :- Anurag Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Anurag Dubey, 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 **Raman** seeking his enlargement on bail in Case Crime No.157 of 2023 under Sections 147, 148, 149, 307, 504, 302 IPC, and Section 3/25/27 of Arms Act, Police Station Bewar, District Mainpuri during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 30.03.2023, a delayed F.I.R. dated 31.03.2023 was lodged by first-informant Sukh Ram and was registered as Case Crime No. 106 of 2022 under Sections 147, 307, 342, 447, 506 I.P.C., Police Station, Malawan, District Etah. In the aforesaid F.I.R. five persons namely, Anupam Gupta, Raman, Rupendra, Arvind and Pushpendra have been nominated as named accused.

5. Learned counsel for applicant contends that deceased died on account of solitary gun shot injury as per the post-mortem report. However, author of the fatal gun shot injury is said to be named and charge sheeted co-accused Anupam Gupta. He, therefore, contends that the case of the present applicant is clearly distinguishable from the named and charge sheeted co-accused Anupam Gupta and similar to the other three named and charge sheeted co-accused who have already been enlarged on bail. The details of the same are as under:

6. Criminal Misc. Bail Application No. 39673 of 2023 (Rupendra Vs. State of U.P.) was allowed vide order dated 19.09.2023. For ready reference same is extracted hereinunder:-

"By means of the bail application the applicant has prayed to be enlarged

on bail in Case Crime No.157 of 2023 at Police Station-Bewar, District-Mainpuri under Sections 147, 148, 149, 307, 504, 302 IPC and Sections 3/25/27 of the Arms Act. The applicant is in jail since 19.04.2023.

The bail application of the applicant was rejected by the learned trial court on 20.07.2023.

The following arguments made by Shri Anurag Dubey, learned counsel assisted by Shri Pawan Kumar, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Anshu Chaudhari, learned counsel for the informant and Shri Rishi Chaddha, learned AGA from the record, entitle the applicant for grant of bail:

- 1. The co-accused-Anupam Gupta and not the applicant has been identified as the principal offender who discharged the firearm and inflicted the sole and fatal gun shot injury to the deceased.***
- 2. A vague and general role has been assigned to the applicant in the assault.***
- 3. The applicant has been nominated on account of petty neighbourhood dispute.***
- 4. The weapon of assault has been recovered from the principal offender-Anupam Gupta.***
- 5. The role of the applicant is distinguishable from that of the principal offender-Anupam Gupta.***
- 6. One countrymade pistol was planted on the applicant to frame him in the instant case to burnish the credentials of the police investigators.***
- 7. There is no independent witness to the recovery.***
- 8. No ballistic report which confirms that the recovered weapon was used in crime has been produced by the prosecution.***
- 9. Prosecution evidence does not connect the applicant with the offence.***
- 10. The recovered article cannot be connected with the offence.***
- 11. The applicant does not have any criminal history apart from this case.***
- 12. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.***

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant-Rupendra be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like

amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted "

7. Criminal Misc. Bail Application No. 42334 of 2023 (Arvind Vs. State of U.P.) was allowed vide order dated 11.10.2023. For ready reference same is extracted hereinunder:-

" By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 157 of 2023 at Police Station Bewar, District Mainpuri under Sections 147, 148, 149, 307, 504, 302 I.P.C. and Section 27/30 of Arms Act. The applicant is in jail since 22.05.2023.

The bail application of the applicant was rejected by the learned trial court on 20.07.2023.

The following arguments made by Shri Arjun Singh Solanki, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Anshu Chaudhary, learned counsel on behalf of the informant and Shri Rishi Chaddha, learned AGA from the record, entitle the applicant for grant of bail:

1. The applicant is not named in the F.I.R.

2. The applicant has not been identified as principal offender who discharged fire-arm and inflicted the sole fatal gunshot injury to the deceased.

3. The role of the applicant is distinguishable from that of the principal offender Anupam Gupta who has inflicted the fatal gun shot injury.

4. The applicant was nominated in the statement given by the first informant belatedly after one month upon due deliberations with the interested parties.

5. The applicant does not have any criminal history apart from the instant case.

6. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant-Arvind be released on bail in the aforesaid case crime

number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

It is informed by Shri Anshu Chaudhary, learned counsel on behalf of the informant that the applicant had threatened the first informant in court.

Learned trial court as well as the police authorities of the District Mainpuri shall ensure that the witnesses are given benefit of Witness Protection Scheme, 2018 and the police authorities promptly take action against the accused persons who threatened the witnesses."

8. Criminal Misc. Bail Application No. 42888 of 2023 (Arvind @ Rajesh Vs. State of U.P.) was allowed vide order dated 17.10.2023. For ready reference same is extracted hereinunder:-

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

The submission is that co-accused, Rupendra and Arvind, have already been enlarged on bail vide Criminal Misc. Bail Application No. 39673 and 42334 of 2023 on 19.9.2023 and 11.10.2023 and the case of the applicant stands on identical footing, hence the applicant is also entitled for bail for the reasons given in bail application of co-accused on the ground of parity. The applicant is in jail since 2.6.2023.

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

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties, larger mandate of the Article 21 of the Constitution of India, considering the recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021 and 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.

Let the applicant, Arvind @ Rajesh, involved in Case Crime No. 157 of 2023, under Sections 147,148,149,307,504,302 IPC, Police Station- Bewar 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.

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

2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.

3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

4. That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 to ensure presence of the applicant.

6. 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

9. On the above premise, the learned counsel for applicant contends that the case of present applicant is similar and identical to aforementioned charge sheeted but bailed co-accused who have already been enlarged on bail. There is no such distinguishing feature on the basis of which the case of the present applicant could be so distinguished from bailed out co-accused so as to deny him bail. He, therefore contends that in view of above and for the facts and reasons recorded in the bail orders of aforementioned bailed out co-accused, applicant is also liable to be enlarged on bail on the ground of parity. 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 21.07.2023. As such he has undergone more than one year and one month 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, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the course of trial. He therefore 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. 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.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, complicity of applicant, gravity and nature of offence and accusation made coupled with the fact that though the applicant is a named and charge sheeted accused yet his case is distinguishable inasmuch as the deceased had died on account of gun shot injury sustained by him, as per the statement of the witnesses, the author of the fatal gun shot injury is named/charge sheeted co-accused Anupam Gupta, the other three named/charge sheeted co-accused have already been enlarged on bail, the case of the present applicant is similar and identical to the bailed out named co-accused, there is no such distinguishing feature on the basis of which the case of present applicant could be so distinguished from aforementioned bailed out co-accused so as to deny him bail, inspite of the fact that the charge sheet has been submitted and therefore, the entire evidence sought to be relied upon by the prosecution stands crystallized, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the course of trial, 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 comment 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- **Raman**, be released on bail in 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 :- 2.11.2023

Imtiyaz