

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46906 of 2023

Applicant :- Udaiveer Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajan Upadhyay, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Supplementary affidavit filed by the learned counsel for applicant in Court today, is taken on record.

Heard Mr. Rajan Upadhyay, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Udaiveer Singh seeking his enlargement on bail in Case Crime No. 414 of 2023, under Sections 302 IPC, P.S. Kotwali, District Mathura, during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred on 21.06.2023, a delayed F.I.R. dated 10.7.2023 was lodged by first informant S.I. Amod Kumar and was registered as Case Crime No. 414 of 2023, under Sections 302 IPC, P.S. Kotwali, District Mathura. In the aforesaid F.I.R., an unknown person has been arraigned as solitary accused.

It is apposite to mention here that prior to the lodging of aforesaid F.I.R., the dead body of an unknown person was recovered by the police on 21.06.2023. However, as the recovered dead body could not be identified, therefore, after completing the necessary formality, the same was disposed of. As per the inquest report (*panchayatnama*) of the body of deceased, the nature of death of the deceased was categorized as homicidal but the cause of death of deceased could not be specified. Thereafter, post mortem of the body of the deceased was conducted. In the opinion of the Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was asphyxia as a result of throttling. However, no ante mortem injury was found on the body of deceased.

It transpires from the record that after above mentioned F.I.R. was lodged, three accused persons namely Rahul, Bhanja alias Manish

and Udiaveer made an extrajudicial confession before Hari Om Verma, brother of the deceased and confessed their criminality in the crime in question. Subsequently, this witness in his statement under Section 161 Cr. P. C. before the Investigating Officer has specified aforementioned three persons for having committed the crime in question. Accordingly, aforementioned three accused were arrested by the police. Thereafter, the statements of the aforesaid accused persons were recorded. All the three accused confessed their involvement in the crime in question. However, as per the confessional statements of aforesaid accused, the role of assault i.e. throttling the deceased was performed by Rahul, Bhanja @ Manish, whereas the dead body of deceased was placed in the Auto Rickshaw of the present applicant and thereafter dropped in a drain. On the basis of above and other material collected by the Investigating Officer during course of investigation, he came to the conclusion that complicity of aforementioned 3 persons is established in the crime in question. He, accordingly, submitted the charge sheet dated 31.7.2023, whereby all the aforesaid accused have been charge sheeted under Section 302 IPC only.

Learned counsel for applicant submits that though applicant is not named in the F.I.R., but a charge sheeted accused, yet he is liable to be enlarged on bail. Present case is a case of circumstantial evidence. Therefore, there is no eyewitness of the occurrence. The complicity of an accused in a case based on circumstantial evidence can be inferred only in accordance with the parameters laid down by the Apex 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 aforementioned judgement is satisfied against the applicant.

It is then contended by the learned counsel for applicant that no recovery has been made either from the person of applicant or on the pointing of applicant. No evidence of last seen has emerged against applicant either. Since there was no pre-existing enmity in between the applicant and the deceased, no animus can be gathered against the applicant for committing the crime in question. No strong motive can be attached to the applicant for committing the crime in question. It is by now well settled that motive plays an important link in the chain of circumstances in a case based on circumstantial evidence. Reference in this regard is made to the judgement of the Supreme Court in **Nandu Singh Vs. State of M.P., 2022 SCC OnLine SC 1454**.

However, irrespective of above, the complicity of applicant in the crime in question is sought to be alleged on the basis of the

following three incriminating circumstances; that are said to have emerged during the course of investigation.

- i. Applicant is the friend of deceased.
- ii. Applicant alongwith two other co-accused are alleged to have made extra judicial confession before Hari Om Verma, brother of deceased regarding commission of crime.
- iii. The confessional statement of applicant himself and two other accused before the Investigating Officer.

In the submission of the learned counsel for applicant, the aforesaid incriminating circumstance when considered either singularly or cumulatively are insufficient to infer the guilt of applicant in the crime in question. No conviction can be based upon confession. Confession by itself is a very weak type of evidence. Confession can be relied upon provided it is corroborated by other material on record. The only material with which the confession of the accused can be corroborated is the post-mortem report. As per the post-mortem report, the cause of death of deceased is ante mortem throttling. However, the role of committing throttling upon the deceased is assigned to other two accused as per the confessional statement of accused. The only evidence that has emerged against applicant is that the dead body of the deceased was kept in auto rickshaw of the applicant. Thereafter, the same was carried away and thrown in a drain. As such, no active role of assault upon deceased has emerged against applicant. As such applicant is liable to be enlarged on bail.

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 23.07.2023. As such, he has undergone 4 months of incarceration. The charge sheet having been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant now stands crystallized, yet no such circumstance has emerged necessitating the custodial arrest of the applicant during the course of trial. On the above premise, it is thus urged that applicant is liable to be enlarged on bail. In case, applicant is enlarged on bail, he 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 the applicant is a charge sheeted accused, therefore, no indulgence be granted by this Court in his favour. The complicity of the applicant is fully established in the crime in question along with other two co-accused as per the extrajudicial confession and confessional statement of the accused itself. The

extrajudicial confession made by the accused stands clearly corroborated by the medical evidence on record, inasmuch as the cause of death of the deceased is throttling. As such, no sympathy be shown by this Court in favour of applicant.

When confronted with above, the learned counsel for applicant contends that irrespective of above, when the confessional statements of the accused as noticed above are examined, it is evident that there is a common thread in the same i.e. the role of throttling the deceased was committed by the other two co-accused. The only allegation that has emerged against applicant is that dead body of the deceased was kept in the auto rickshaw of the applicant which was taken away from the place of occurrence and thrown in the drain. On the above conspectus, it is urged that applicant shall be guilty of an offence under Section 201 IPC only. To buttress his submission he has referred to the judgement of Supreme Court in **Kashmira Singh Vs. State of Punjab, AIR 1952 SC 159**. Moreover, the applicant has not been charge-sheeted under Sections 34 or 120 B I.P.C. As such, no common intention or common object can be attached to the applicant for committing the crime in question.

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 accused, accusation made and coupled with the fact that as per the confessional statements of the accused, the only role assigned to the applicant is that dead body of the deceased was kept in the auto rickshaw of applicant and thereafter, taken away from the place of occurrence and thrown in a drain near the open land, the case of the present applicant is thus distinguishable from other two co-accused who have committed throttling upon the deceased, the charge sheet has already been submitted against the applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant now stands crystallized, in spite of above, the learned A.G.A. could not point out any such circumstances from the record necessitating the custodial arrest of the applicant during the course of trial, the clean antecedents of 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, the applicant has made out a case for bail.

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

Let the applicant **Udaiveer Singh** involved in aforesaid case crime number, be released on bail on his 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 he 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..

(iii) 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., 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, 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 him 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.

The other two co-accused shall not be entitled to claim parity with this order.

Order Date :- 7.12.2023

HSM