

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46816 of 2023

Applicant :- Bhupe @ Bhupendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Upendra Kumar Pushkar

Counsel for Opposite Party :- G.A., Ajai Mani Tiwari, Ajay Mani Tiwari

Hon'ble Rajeev Misra, J.

Heard Mr. Upendra Kumar Pushkar, the learned counsel for applicant, the learned A.G.A. for State and Mr. Ajai Mani Tiwari, the learned counsel representing first informant.

Perused the record.

This application for bail has been filed by applicant Bhupe @ Bhupendra seeking his enlargement on bail in Case Crime No. 33 of 2023, under Sections 302, 34, 201 IPC, P.S. Sasni, District Hathras, during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred in between 8.2.2023 and 9.2.2023, a prompt F.I.R. dated 9.2.2023 was lodged by first informant Smt. Sanjana (widow of the deceased) and was registered as Case Crime No. 33 of 2023, under Section 302 IPC, P.S. Sasni, District Hathras. In the aforesaid F.I.R., one Km. Deepa alias Dipesh has been nominated as solitary named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that the husband of the first informant namely Babloo was brutally murdered and his dead body was found lying in Maruti Zen car belonging to the first informant. The F.I.R. further records that first informant has every apprehension that the death of the husband of the first informant has been caused by the family members of named accused Km. Deepa.

After aforementioned F.I.R. was lodged, Investigating Officer proceeded with the statutory investigation of concerned case crime number in terms of Chapter XII Cr. P. C. The inquest (*Panchayatnama*) of the body of the deceased was conducted. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of the deceased was categorized as homicidal and the cause of death of the deceased was said to be the injuries sustained by the deceased. Subsequent to above, the post mortem of the body of the deceased was conducted. The Autopsy Surgeon who conducted autopsy of the body of

deceased opined that the cause of death of deceased is haemorrhagic shock as a result of ante mortem injuries.

Haemorrhagic shock as a result of ante mortem injuries

The Autopsy Surgeon found following ante mortem injuries on the body of deceased:-

1. Chop wound in uniform on right side of parietal bone
2. Lacerated wound (3.0 cm x 0.3 cm)
3. Chop wound (3.0 x 0.4) cm on
4. Chop wound (3.0 x 0.4) cm on skin
5. Multiple chop wound (9.0 cm x 5.0 cm)
6. Chop wound (5.0 x 0.8) cm on
7. Multiple chop wound (4.5 cm x 4.0 cm)
8. Upper 1/3rd pinna is torn
9. Chop wound (3.0 x 1.0) on
10. Chop wound (5.0 x 0.4 cm) on
11. Abraded contusion on right side
12. Chop wound (2.5 x 0.4 cm)
13.
14.
15. Chop wound (5 cm x 0.5 cm) on left side of face posterior to left angle of mouth
16. Chop wound 3.0 cm x 0.3 cm on right side of upper part
17. Multiple abrasion (10.0 cm x 3.5 cm) on front of neck
18. Stab wound (4.0 cm x 1.5 cm) on left iliac fossa wound is connecting with parietal cavity.
19. Stab wound (4.0 cm x 1.5 cm), 1.0 cm medial to wound is connecting with parietal cavity.
20. Chop wound (8.0 cm x 3.0 cm) on left side of wound 5.0 cm lateral to umbilicus.
21. Chop wound (5.0 x 3.0 cm) on left side of 3 cm lateral to injury No. 20.
22. Abrasion (11.0 cm x 6.0 cm) on right
23. Abrasion (6.0 x 1.0 cm) 6.0 cm below injury 22
24. Abrasion (1.5 x 1.0 cm) on posterior aspect of right leg 12.0 cm above to right ankle.

During course of investigation, Investigating Officer examined the first informant. However, nothing concrete material emerged in the statement of the first informant. Thereafter, the Investigating Officer examined following witnesses under Section 161 Cr. P. C.

- (1) Smt. Sanjana
- (2) Balbir Singh
- (3) Trivendra Singh

- (4) Pappoo**
- (5) Manoj Kumar**
- (6) Ashok Kumar**
- (7) Raghuvir Singh**
- (8) Smt. Sharda Devi (mother of deceased)**
- (9) Jagdish son of Mangal Sain**
- (10) Dr. Varun Kumar Chaudhary**
- (11) Jagdish son of Ramji Lal**

Two of the aforesaid witnesses namely Manoj Kumar and Ashok Kumar in their statements under Section 161 Cr. P. C. have stated that the deceased was last seen in the company of applicant Bhupe @ Bhupendra and Sumit. On the above piece of evidence, the applicant Bhupe @ Bhupendra and Sumit were arrested on 13.2.2023. On the pointing of applicant Bhupe @ Bhupendra a broken brick having blood stains and the knife which was used in the causing death of the deceased were recovered from the bushes. Subsequently, a bike bearing registration No. UP 86 R 4905 which was used in the commission of crime was also recovered.

The weapon of assault recovered was sent to the F.S.L. Laboratory for chemical examination. As per the report of the F.S.L. Laboratory, Aligarh, human blood was found on articles 1 to 10, which includes the weapons of assault.

The motive which has been gathered against applicant for committing the crime in question is that the deceased is alleged to have given a sum of Rs. 1 lac to the applicant which was to be repaid. Since the applicant could not repay the said amount, therefore, alleged crime was committed by the applicant to do away with the said liability. With regard to the co-accused Sumit, the motive which has emerged against him, is that the deceased had dislodged the modesty of sister of Sumit. Since the motive to commit the crime in question is a weak type of evidence, therefore, no motive can be gathered against him. Investigating Officer came to the conclusion that complicity of applicant is established in the crime in question. He, accordingly, submitted charge sheet dated 27.4.2023, whereby applicant has been charge sheeted under Sections 302, 34, 201 IPC.

Learned counsel for applicant submits that applicant is innocent. He is not named in the F.I.R. Though, applicant is a charge sheeted accused, yet he is liable to be enlarged on bail. Present case is a case of circumstantial evidence and therefore, there is no eye witness of the occurrence. The complicity of an accused in a case based on circumstantial evidence has to be inferred in accordance with the parameters laid down by the

Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622**. However, upto this stage, none of the parameters laid down by the Apex Court in aforementioned judgement is satisfied against the applicant. The complicity of applicant in the crime in question is said to be alleged in view of following incriminating circumstances that have emerged against applicant during the course of investigation.

(a) Recovery of broken brick having blood stains and the knife also having blood stains which are alleged to have been used in the commission of the crime.

(b) Since the applicant was to repay a sum of Rs. 1 lac to the deceased which he had borrowed from the deceased, but could not be repaid by him, therefore, applicant caused the death of the deceased to do away with the liability mentioned above.

(c) The theory of last seen has appeared against applicant and co-accused Mukesh as per the statements of two witnesses namely Manoj Kumar and Ashok Kumar, who in their statements have stated that the accused and the deceased were seen together at 6 p.m. on 8.2.2023.

(d) The C.D.R. report of the applicant shows that the applicant was in the vicinity of the location of deceased.

With regard to the recovery of the articles alleged to have been used in the commission of the crime, the learned counsel for applicant contends that the alleged recoveries are joint recovery and therefore, same are inadmissible. He, further, submits that there is no independent witness of the recovery. The witnesses Manoj Kumar and Ashok Kumar are interested witnesses as they are brother and friend of the deceased. He, therefore, submits that recovery is implanted, therefore, recovery is unreliable.

With regard to the motive against applicant for committing crime in question, it is urged by the learned counsel for applicant that there is nothing on record to show that the deceased had given a sum of Rs. 1 lac to the applicant. Since transaction was above Rs. 20,000/- and there being no document in support of the same, the same is a sham transaction and therefore, unworthy of reliance.

According to the learned counsel for applicant, motive plays an important link in completing the chain of circumstances in a case based on circumstantial evidence. To buttress his submission, he has referred to the judgement of Supreme Court in **Nandu Singh Vs. State of M.P., 2022 SCC OnLine SC 1454**. As no strong motive has emerged against applicant as such the applicant is liable to be enlarged on bail.

In respect of the theory of last seen, which has emerged against applicant in the statement of the two witnesses namely Ashok Kumar and Manoj Kumar, it is urged by the learned counsel for

applicant that no conviction can be maintained simply on the basis of the theory of last seen as held in **Jabir Vs. State of Uttrakhand, 2023 SCC OnLine SC 32 and Jaswant Gir Vs. State of Punjab, (2005) 12 SCC 438.**

It is then submitted by the learned counsel for applicant that the C.D.R. report of the applicant is by itself not so sufficient and clinching material so as to infer the guilt of the applicant.

It is lastly submitted by the learned counsel for applicant that the confession made by an accused while in custody cannot be used against the accused himself by virtue of the provisions contained in Sections 25 and 26 of the Evidence Act.

On the above conspectus, he, therefore, submits that applicant is liable to be enlarged on bail.

Per contra, the learned A.G.A. and the learned counsel for first informant have vehemently opposed the prayer for bail. They submit that the deceased had sustained as many as 24 injuries on his person. The injuries sustained by the deceased could have been caused by the weapons of assault recovered on the pointing of applicant and co-accused Sumit. Moreover, the weapon of assault so recovered had blood stains which as per F.S.L. report were of human blood. The said recovery cannot be said to be faulted on the ground that the witnesses of recovery namely Manoj Kumar and Ashok Kumar are brother and friend of the deceased. In respect of other incriminating circumstances, the learned A.G.A. submits that when all the incriminating circumstances, which have emerged against applicant are considered together in the light of confession made by the applicant and co-accused, it is apparent that the confession made by the co-accused and the applicant is corroborated by the other material on record. In view of above, the confession made by the applicant and co-accused Sumit though is a weak type of evidence can be relied upon to infer the guilt of the applicant. It is thus urged that the complicity of applicant is fully established in the crime in question. As such, no sufficient or good ground exists to enlarge the applicant on bail.

When confronted with above, the learned counsel for applicant could not overcome the same.

Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, accusation made and complicity of applicant coupled with the fact that the objections raised by the learned A.G.A. in opposition to the present application for bail could not be dislodged by the learned counsel for applicant, therefore, irrespective of varied submission urged by the learned counsel

for applicant in support of present application for bail, but without making any comment on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

As a result, present application for bail fails and is liable to be **rejected**.

It is, accordingly, **rejected**.

Order Date :- 30.11.2023

HSM