

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47742 of 2023

Applicant :- Lavjeet

Opposite Party :- State of U.P.

Counsel for Applicant :- J.B. Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. J.B. Singh, Advocate along with Mr. Vipin Kumar, 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-Lavjeet, seeking his enlargement on bail in Case Crime No. 777 of 2023, under Sections 304, 337, 338, 287, 34 IPC and Section 7 Criminal Law Amendment Act, 2013, Police Station-Bisrakh, District-Gautam Budh Nagar during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 15.09.2023, a prompt FIR dated 15.09.2023 was lodged by first informant-Anil Kumar and was registered as Case Crime No. 777 of 2023, under Sections 304, 308, 337, 338, 287, 34 IPC and Section 7 Criminal Law Amendment Act, 2013, Police Station-Bisrakh, District-Gautam Budh Nagar. In the aforesaid FIR, 9 persons namely - (1) Harish Sharma, (2) Rishabh Arora, (3) Lavjeet (applicant herein), (4) Vikas, (5) Aditya Chandra, (6) Rahul, (7) Devendra Sharma, (8) Sunil and (9) Shailendra have been nominated as named accused whereas certain other employees of the Construction Company namely Girdhari Lal Construction Private Limited have also been arraigned as accused.

5. The gravamen of the allegations made in the FIR is to the effect that 9 persons who were on the lift died as the lift collapsed while coming down.

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 said to be accidental and the cause of death of deceased was specified as injuries sustained by the deceased on account of fall of the ill-fated lift. 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 the deceased was said to be Shock and Hemorrhage as a result of ante-mortem injuries.

7. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have supported the FIR, to the extent that the occurrence giving rise to present criminal proceedings occurred on account of fall of the ill-fated lift while coming downwards in which, the deceased persons had boarded. However, the learned A.G.A. contends that investigation is still going on.

8. Learned counsel for applicant contends that though applicant is a named accused yet he is liable to be enlarged on bail. As per the material on record, it is explicitly clear that the occurrence giving rise to present criminal proceedings is an accident in which, the lift installed in the building collapsed and accordingly, fell down while coming downwards resulting in the death of 9 persons. On the aforesaid premise, the learned counsel for applicant contends that applicant cannot be said to have committed any deliberate act resulting in the death of deceased. Attention of the Court was then invited to the averments made in paragraph 22 of the affidavit filed in support of present application for bail and on basis thereof, he contends that applicant cannot be said to be even vicariously liable for the occurrence in question. He, therefore, submits that even no tortious liability can be leveled against applicant. Apart from above, the company namely Girdhari Lal Construction Private Limited has already paid ex-gratia compensation of Rs. 20 lac each to the family members of each of the deceased. On the above premise, he thus contends that applicant is liable to be enlarged on bail.

9. 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 16.09.2023. As such, he has undergone more than 2 months of incarceration. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of investigation/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 accused, therefore, he does not deserve any indulgence by this Court. The occurrence giving rise to present criminal proceedings has occurred on

account of negligence on the part of the named accused including present applicant. Referring to the principle of absolute liability in case of industrial tort, he contends that since the occurrence giving rise to the present criminal proceedings has occurred on account of negligence of the employees of the company and admittedly, the applicant is an employee of the company, therefore, no exception can be carved out in the case of present applicant. In the occurrence giving rise to present criminal proceedings, 9 persons have died. As such, no sympathy be shown by this Court in favour of applicant. 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 the occurrence giving rise to the present criminal proceedings has occurred not on account of any deliberate act of omission or commission on the part of the applicant, the death of deceased occurred on account of an accident, with reference to the averments made in paragraph 22 of the affidavit filed in support of present application for bail, the applicant cannot be held responsible for the maintenance of the lift in question, prima-facie no tortious liability can be fixed against applicant, the clean antecedents of applicant, the period of incarceration undergone, coupled with the fact that no useful purpose shall be served in keeping the applicant under incarceration, 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, 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-Lavjeet**, 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 :- 30.11.2023

Vinay