

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 47793 of 2023

**Applicant :-** Akhilesh

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Shailendra Kumar Tripathi

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajeev Misra,J.**

Heard Mr. Shailendra Kumar Tripathi, learned counsel for the applicant and the learned A.G. A. for State.

This bail application has been filed by the applicant Akhilesh seeking his enlargement on bail in Case Crime No. 139 of 2023, under Sections 304, 323, 506 IPC, P.S. Thatihiya, District Kannauj during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred 34.4.2023, a delayed F.I.R. dated 24.4.2023 was lodged by first informant Awadhesh and was registered as Case Crime No. 139 of 2023, under Sections 304, 323, 506 IPC, P.S. Thatihiya, District Kannauj . In the aforesaid F.I.R., four persons namely Akhilesh, Pratap, Udaiveer and Jaswant have been nominated as named accused.

Learned counsel for applicant submits that though applicant is a named as well as charge sheeted accused, inasmuch as charge sheet has been submitted against all the named accused on 19.5.2023, yet he is liable to be enlarged on bail.

Three of the named and charge sheeted accused have already been enlarged on bail by this Court. The details of the same are as follows:-

**(1) Criminal Misc. Bail Application No. 39284 of 2023 (Pratapbhan Singh Vs. State of U.P.) decided on 15.9.2023**

**(2) Criminal Misc. Bail Application No. 41562 of 2023 (Udaiveer Vs. State of U.P.) decided on 05.10.2023**

**(3) Criminal Misc. Bail Application No. 41808 of 2023 (Jaswant Vs. State of U.P.) decided on 31.10.2023**

For ready reference, aforesaid orders are reproduced herein under:-

**Bail Order of co-accused Pratapbhan Singh**

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

There is allegation in the first information report that the applicant, Pratapbhan Singh, co-accused, Udai Veer, Jaswant and Akhilesh were fighting amongst themselves when brother of the informant, Kamlesh and Udhan, s/o Siyaram, who were passing by tried to stop their fighting but they were beaten by the accused persons as a result of which, Kamlesh suffered injuries and Udan died in the hospital. Learned counsel for the applicant further submits that there was no intention to cause murder of the deceased. It is case of culpable homicide not amounting to murder. Applicant is in jail since 28.04.2023 and has no criminal history to his credit.

Learned AGA has opposed the prayer for bail but could not dispute the above submissions.

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India and 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, Pratapbhan Singh, involved in Case Crime No.139 of 2023 (Session Trial No.576 of 2023), under Sections 304, 323, 504 I.P.C, Police Station Thathiya, District- Kannauj 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.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each

date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 of the Indian Penal Code.

(v) 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 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.

In case of breach of any of the above conditions, the complainant is free to move an application for cancellation of bail before this court.

Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted."

#### Bail Order of co-accused Udaiveer

"1. Supplementary affidavit filed today on behalf of the applicant is taken on record.

2. Heard Sri C.P. Pandey, learned counsel for the applicant, Sri Dhirendra Kumar Verma, learned counsel for the informant and Sri Imran Khan, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 139 of 2023 (S.T. No. 576 of 2023), under Sections 304,323, 504 IPC, Police Station Thathiya, District Kannauj during pendency of the trial.

4. FIR of the present case was lodged against applicant and three others and according to the FIR applicant and three other accused persons made assault through kick, fist and wooden stick upon the brothers of the informant and due to the assault made by them one brother Udhan died and Kamlesh sustained injury.

5. Learned counsel for the applicant submitted that on the basis of false allegation applicant along with three others has been roped in the present matter. He further submits that bail application of co-accused Pratapbhan Singh has already been allowed by the co-ordinate Bench of this Court vide order dated 15.09.2023 passed in Criminal Misc. Bail Application No. 39284 of 2023 and case of applicant is at par with him. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 28.04.2023.

6. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that only general role has been assigned to all the accused persons including applicant and bail application of co-accused Pratapbhan Singh has already been allowed by this Court and case of applicant is at par with him.

7. I have heard learned counsel for the parties and perused the record of the case.

8. Considering the fact that only general role has been assigned to all the accused persons and co-accused Pratapbhan Singh has already been released on bail and applicant is not having any criminal history and in the present matter he is in jail since 28.04.2023, in my view, applicant is entitled to be released on bail.

9. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

10. Let the applicant - Udaiveer be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

11. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

12. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial."

#### **Bail Order of co-accused Jaswant**

1. Heard learned counsel for the applicant and learned A.G.A. for the State and perused the material on record.

2. By means of this application, the applicant, Jaswant, who is involved in Case Crime No. 139 of 2023, under Sections 304, 323, 504 IPC, Police Station Thathiya, District Kannauj and he is in jail since 28.04.2023, is seeking enlargement on bail during the trial.

**3. It is submitted by learned counsel for the applicant that similarly placed co-accused, Udaiveer, has already been enlarged on bail by this Court by order dated 05.10.2023 passed in Criminal Misc. Bail Application No. 41562 of 2022. He has further submitted that since the role of the applicant is identical to that of co-accused, Udaiveer, who has already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity and for the reasons given in the order of co-accused.**

**4. The prayer for bail has vehemently been opposed by learned A.G.A.**

**5. Considering the submissions made by learned counsel for the applicant as well as learned A.G.A., this Court is of the view that the applicant has made out a case for grant of bail on the ground of parity.**

**6. In view of the above, let the applicant be released on bail on his executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the court concerned with the following conditions :-**

**(i) The applicant shall not tamper with the evidence or threaten the witnesses.**

**(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.**

**(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.**

**(iv) 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. is issued and the 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 of the Indian Penal Code.**

**(v) 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 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.**

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

**8. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted."**

On the above premise, it is thus urged by the learned counsel for applicant that case of present applicant is similar and identical to aforementioned named/charge sheeted but bailed out co-accused. There is no such distinguishing feature, on the basis of which, the case of present applicant can be so distinguished from the aforementioned 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 co-accused, applicant is liable to be enlarged on bail on the ground of parity.

Per contra, the learned A.G.A. has opposed the prayer for bail. With reference to the statement of Kamlesh examined under Section 161 Cr. P. C. he submits that the case of the present applicant is different from other co-accused, but it could not fully establish the same.

Having heard the learned counsel for applicant, the learned A.G.A. for state, upon perusal of record, evidence, complicity of the accused, accusation made, the nature and gravity of offence, coupled with the fact that similarly situate and circumstanced named/charge sheeted co-accused, have already been enlarged on bail, there is no such distinguishing feature, in the case of present applicant distinguishing his case from bailed out co-accused so as to deny him bail, as such in view of the above and for the facts and reasons recorded in the bail orders of co-accused, the clean antecedents of applicant, 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, therefore irrespective of the objections raised by the learned A.G.A. in opposition to present application for bail, but without making any comments on the merits of the case, the applicant has made out a case for bail.

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

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

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure 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 her, 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 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on her 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 :- 8.11.2023**

**HSM**