

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48966 of 2023

Applicant :- Yagyanath

Opposite Party :- State of U.P.

Counsel for Applicant :- Sudhir Kumar Agarwal, Ganesh Shankar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Sudhir Kumar Agarwal, 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-**Yagyanath** seeking his enlargement on bail in Case Crime No. 403 of 2021, under Sections 147, 149, 323, 506, 308, 452, 427, 304 I.P.C., Police Station- Koraon, District- Prayagraj during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 26.11.2021, a delayed F.I.R. dated 28.11.2021 was lodged by first-informant Gulab Kali and was registered as Case Crime No. 403 of 2021, under Sections 147, 149, 323, 506, 308, 452, 427, 304 I.P.C., Police Station- Koraon, District- Prayagraj. In the aforesaid F.I.R. five persons namely Yagyanath, Lalji, Principal, Prem Nath and Ravindra Nath have been nominated as named accused. Subsequently, one of the injured namely, Kallu Ram who had sustained injury in the occurrence as noted above succumbed to the injury sustained by him.

5. Prior to aforesaid F.I.R., in respect of same incident dated 26.11.2021 another F.I.R. dated 27.11.2021 was lodged from the side of the applicant through first informant Lalji Goswami and was registered as Case Crime No. 400 of 2021 under Sections 147, 323, 504, 302 I.P.C. Police Station Koraon, District Prayagraj. In the aforesaid F.I.R. five persons namely Kallu, Rajitram, Hari Prashad, Ram Channdra and Chote Ram have been nominated. As per the prosecution story one person namely Shivpatia, mother of the first informant died.

6. Learned counsel for applicant contends that the occurrence is admitted to the parties inasmuch as cross F.I.R's. have been lodged from both the sides. Therefore, the primary issue to be considered by Court is as to who is the aggressor. However, as per the material collected by the Investigating Officer upto this stage, the aggressor in the crime in question cannot be specifically identified. It is then contended that in the F.I.R. giving rise to the present criminal proceedings there are as many as five named accused, four of the named accused have already been enlarged on bail. Their bail orders are on record from page 59 onwards. The details of the same are as under:-

7. Criminal Misc. Bail Application No. 4966 of 2022 (Lal Ji Vs. State of U.P.) was allowed vide order dated 16.02.2022. For ready reference same is extracted hereinunder:-

"Heard learned counsel for the applicant as well as learned A.G.A. for the State of U.P and perused the material available on record.

Applicant claims to have been falsely implicated in this case. No offence whatsoever has been committed by the applicant. Both the sides have sustained injuries and both the sides have lodged their respective F.I.R.'s against each other regarding the same incident at the same time and the place is also the same. Both the sides have suffered casualties. General role has assigned to all the accused persons. In case, the applicant is admitted to bail, there is no possibility of his absconding or misusing the liberty of bail. The applicant has no criminal history and is languishing in jail since 03.12.2021.

Learned A.G.A. has opposed prayer for bail.

Without entering into merit of the case but considering the facts and circumstances of the case, nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with witness or apprehension of threat to the complainant and prima facie satisfaction of the Court in support of the charge, the applicant is entitled to be released on bail.

Accordingly, bail application is allowed.

Let the applicant - Lal Ji involved in Case Crime No. 403 of 2021, under Sections - 147, 149, 323, 506, 308, 452, 427, 304 I.P.C., Police Station - Koraon, District - Prayagraj 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."

8. Criminal Misc. Bail Application No. 4911 of 2022 (Sachendra Nath @ Raju Vs. State of U.P.) was allowed vide order dated 16.02.2022. For ready reference same is extracted hereinunder:-

"Heard Sri Sudhir Kumar Agarwal, learned counsel for the applicant, learned A.G.A for the State and perused the record.

By means of this application, the applicant who is involved in case crime no.403 of 2021 under Section 147, 149, 323, 506, 308, 452, 427, 304 IPC P.S. Koraon District Prayagraj is seeking enlargement on bail during the trial. The applicant is languishing in jail since 3.12.2021.

Contention raised by the learned counsel for the applicant is that for the incident of 26.11.2021 there are cross versions. A case bearing Case Crime No.400 of 2021 was lodged on 27.11.2021 by elder brother of applicant Lalji Goswami whereas another case was registered being Case Crime No.403 of 2021 on 28.11.2021 by Gulab Kali. Contention is that the present incident of free fight took place in which both the sides sustained injuries and one person died from each side. At this stage, it can not be said as to which of the party was aggressor over whom. The deceased had sustained a singular injury on the left side of the forehead though the role of assault has been attributed to all five named accused persons.

Learned AGA has opposed the prayer for bail.

Keeping in view the generality of the allegation and the fact that it is a case of free fight and clear criminal antecedent of the applicant and keeping in view the nature of the offence, evidence, complicity of the accused and submissions of learned counsel for the parties, I am of the view that the applicant has made out a case for bail.

Let the applicant, Sachendra Nath @ Raju, 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 concerned with the following conditions which are being imposed in the interest of justice:-

(i) THE APPLICANT/APPLICANTS SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE/THEY SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE FIXED FOR EVIDENCE WHEN THE WITNESSES IS/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/APPLICANTS SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS/HER/THEIR COUNSEL. IN CASE OF HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIS/HER/THEIR UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT/APPLICANTS 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/APPLICANTS FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH

PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIS/HER/THEIR, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT/APPLICANTS 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/APPLICANTS IS/ARE 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 HIS/HER/THEIR 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/APPLICANTS.

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

Since the bail application has been decided under extra-ordinary circumstances, thus in the interest of justice following additional conditions are being imposed just to facilitate the applicant/applicants to be released on bail forthwith. Needless to mention that these additional conditions are imposed to cope with emergent condition:-

- 1. The applicant/applicants shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is/are restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.**
- 2. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.**
- 3. The computer generated copy of such order shall be self attested by the counsel of the party concerned.**
- 4. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing."**

9. Criminal Misc. Bail Application No.5417 of 2022 (Principal @ Banne Vs. State of U.P.) was allowed vide order dated 17.02.2022. For ready reference same is extracted hereinunder:-

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

Heard learned counsel for the applicant, learned AGA for the State and perused the record.

It has been argued by learned counsel for the applicant that applicant is innocent and he has been falsely implicated in this case. It was submitted that in fact applicant side was assaulted by the complainant party and that in the same incident, the mother of applicant was murdered and in this connection, co-accused Lal Ji Goswami has lodged an FIR, under Sections 147, 323, 504 and 302 IPC on 27.11.2021 vide case crime no.400 of 2021, against husband of complainant of this case and her other family members. After that FIR, the FIR of instant case has been lodged on 28.11.2021 against five accused persons including applicant. Only general and omnibus role has been assigned to all the accused persons including applicant. It was submitted that deceased has sustained only single injury and that there is no such specific evidence that which of the accused is author of the said injury. The injured persons have not sustained any serious injury. It has been further submitted that similarly placed co-accused Lal Ji has already been enlarged on bail by co-ordinate Bench of this Court, the copy of which, is available on record. It has been submitted that the applicant is languishing in jail since 03.12.2021 having no criminal history and that in case the applicant is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

Learned A.G.A. has opposed the prayer for bail, however, it has not been disputed that similarly placed co-accused, namely, Lal Ji has already been granted bail by this Court.

Considering the submissions of learned counsel for the parties, facts of the case, nature of allegations, period of custody and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, the Court is of the view that a case for bail is made out. Hence, the bail application is hereby allowed.

Let the applicant Principal @ Banne involved in Case Crime No. 403 of 2021, under Sections - 147, 149, 323, 506, 308, 452, 427, 304 I.P.C., Police Station - Koraon, District - Prayagraj, be released on bail on furnishing each a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:

- 1. The applicant shall not tamper with the evidence during the trial.*
- 2. The applicant shall not pressurize/ intimidate the prosecution witness.*
- 3. The applicant shall appear before the trial court on the date fixed, unless personal presence is exempted.*
- 4. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.*
- 5. 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 them from disclosing such facts to the Court or to any police officer or tamper with the evidence.*

In case of breach of any of the above condition, the Court below shall be at liberty to cancel bail of applicant in accordance with law."

10. Criminal Misc. Bail Application No.5037 of 2022 (Prem Nath @ Babloo Vs. State of U.P.) was allowed vide order dated 21.02.2022. For ready reference same is extracted hereinunder:-

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

Heard learned counsel for the applicant, learned AGA for the State and perused the record.

It has been argued by learned counsel for the applicant that applicant is innocent and he has been falsely implicated in this case. It was submitted that in fact applicant party was assaulted by the complainant party and that in the same incident, the mother of applicant was murdered and in this connection, co-accused Lal Ji Goswami has lodged an FIR, under Sections 147, 323, 504 and 302 IPC on 27.11.2021 vide case crime no.400 of 2021, against husband of complainant of this case and her other family members. After that FIR, the FIR of instant case has been lodged on 28.11.2021 against five accused persons including applicant. Only general and omnibus role has been assigned to all the accused persons including applicant. It was submitted that deceased has sustained only single injury and that there is no such specific evidence that which of the accused is author of the said injury. The injured persons have not sustained any serious injury. It has been further submitted that similarly placed co-accused Lal Ji and Principal @ Banne have already been enlarged on bail by co-ordinate Bench of this Court, the copy of which, is available on record. It has been submitted that the applicant is languishing in jail since 03.12.2021, having no criminal history and that in case the applicant is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

Learned A.G.A. has opposed the prayer for bail, however, it has not been disputed that similarly placed co-accused, namely, Lal Ji and Principal @ Banne have already been granted bail by this Court.

Considering the submissions of learned counsel for the parties, facts of the case, nature of allegations, period of custody and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, the Court is of the view that a case for bail is made out. Hence, the bail application is hereby allowed.

Let the applicant Prem Nath @ Babloo involved in Case Crime No. 403 of 2021, under Sections - 147, 149, 323, 506, 308, 452, 427, 304 I.P.C., Police Station - Koraon, District - Prayagraj, be released on bail on furnishing each a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:

1. The applicant shall not tamper with the evidence during the trial.

2.The applicant shall not pressurize/ intimidate the prosecution witness.

3.The applicant shall appear before the trial court on the date fixed, unless personal presence is exempted.

4. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

5.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 them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above condition, the Court below shall be at liberty to cancel bail of applicant in accordance with law."

11. On the above premise, it is thus urged by the learned counsel for applicant that the case of present applicant is similar and identical to aforementioned named co-accused who have already enlarged on bail. There is no such distinguishing feature, on the basis of which the case of present applicant could be so distinguished from other named 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 referred to above, applicant is also liable to be enlarged on bail on the ground of parity.

12. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 27.09.2023. As such, he has undergone more than two months of incarceration. 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 now stands crystallized. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. He therefore contends 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.

13. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused inasmuch as the charge sheet has been submitted against applicant and others on 19.02.2022, therefore, he does not deserve any indulgence by this Court. However, the learned A.G.A. could not dislodge the factual/legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

14. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, complicity of accused and accusation made coupled with the fact that occurrence is admitted to the parties inasmuch as cross F.I.R's. have been lodged from both the sides, one person has died from both the sides, as per the material collected by the Investigating Officer upto this stage, the aggressor in the crime in question cannot be specifically nominated, the primary issue required to be considered is as to who is the aggressor in the crime in question, the said question can be answered effectively only during the course of trial, as per the evidence that has emerged during the course of trial, similarly situate and circumstanced other named/charge sheeted co-accused have already enlarged on bail, the learned A.G.A. could not point out any such distinguishing feature in the case of the present applicant so as to distinguish his case from other named/charge sheeted co-accused so as to deny him bail, the clean antecedents of applicant, the period of incarceration undergone, the police report under Section 173 (2) CrPC i.e. charge-sheet 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 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, the applicant has made out a case for bail.

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

16. Let the applicant- **Yagyanath** 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.

17. 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 :- 8.12.2023

Imtiyaz