

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48604 of 2023

Applicant :- Ramu @ Ramkumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ganesh Datta Sharma, Pankaj Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Abhishek Mishra, Advocate, holding brief of Mr. Pankaj Sharma, 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 Ramu @ Ramkumar, seeking his enlargement on bail in Case Crime No. 174 of 2023, under Sections 302, 307, 147, 148, 149, 34 IPC Police Station- Hathras, District Hathras during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred on 5.7.2023, a prompt F.I.R. dated 5.7.2023 was lodged by first informant Manoj Kumar, brother of the deceased and was registered as Case Crime No.174 of 2023, under Sections 302, 307, 147, 148, 149, 34 IPC Police Station- Hathras, District Hathras. In the aforesaid F.I.R. two unknown persons who came on motorcycle bearing Registration No. UP 81 BN 8193 have been arraigned as accused.

Gravamen of the allegations made in the F.I.R. is to the effect that two unknown persons riding on a motorcycle came and shot the brother of first informant on his left leg, on account of which he sustained gun shot injuries.

After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C.

Learned counsel for applicant submits that unfortunately, the victim Sanjay brother of the first informant succumbed to the injuries sustained by him on 5.7.2023 itself. Consequently, case was converted under section 302 IPC. Thereafter the inquest of the body of the deceased was conducted. In the opinion of witness of inquest (panch witness), the nature of death of deceased was categorized as homicidal and the cause of death of deceased was said to be gun shot injuries sustained by deceased. Subsequent to above, post mortem of the body of deceased was conducted. The autopsy surgeon who conducted autopsy of the body of deceased

opined that cause of death of deceased is hemorrhagic shock as a result of ante-mortem firearm injuries. The autopsy surgeon found following ante-mortem injuries on the body of deceased:

"1. Entry wound of firearm injury measuring around 1 cm x 0.5 cm margins inverted present over left knee Jt. Medial aspect clotted blood present over wound.

2. Exit wound of firearm injury measuring around 2.5 cm x 1.5 cm over posterior aspect of mid thigh of lower limb 12 cm above knee joint marginal everted clotted blood present over wound."

During course of investigation, Investigating Officer examined first informant and other witnesses under section 161 CR.P.C. The complicity of applicant in the crime in question emerged in the statement of Anil Kumar who in his statement has stated that applicant was having enmity with the deceased and therefore, he has conspired in the commission of crime in question. Statement of accused Monishkant and Gaurav Chaudhri suffers. Accordingly they were arrested. The accused in their confessional statement stated that they ran away from the place of occurrence by motorcycle of present applicant. On the basis of above and other material collected by Investigating Officer, during course of investigation he came to the conclusion that complicity of applicant is also established in the crime in question. He, accordingly submitted the charge sheet dated 5.9.2023 whereby four persons all the named accused have been charge sheeted under sections 302, 307, 147, 148, 149, 34 IPC.

Learned counsel for applicant contends that though applicant is charge sheeted accused, yet he is liable to be enlarged on bail. Applicant is not named in the F.I.R. Complicity of applicant in the crime in question has emerged in the statement of one witness namely, Anil. However, in the statement, role of conspiracy is assigned. Conspiracy of close door affair and subject to trial evidence. Complicity of applicant is established in the confessional statement of two other accused Monishkant and Gaurav Chaudhri. Learned counsel for applicant submits that confession by itself is a conclusive piece of evidence, confession of an accused against co-accused cannot be used until and unless there is corroboration. Upto this stage, no material has emerged that confessional statement is corroborated with other cogent and clinching evidence.

Even otherwise, learned A.G.A. submits that subsequent to occurrence giving rise to present application, applicant has been implicated in gangster Act by way of Criminal Case No. 277 of 2023. Applicant is in jail since 14.3.2023. As such, he has undergone more than five months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized. However, upto this stage no such incriminating circumstance has emerged necessitating the custodial arrest of applicant. It is thus urged 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicants are named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicants, with reference to the record at this stage.

Having heard the learned counsel for applicants, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicants, accusation made coupled with the fact that applicant was having enmity with the deceased and therefore, he has conspired in the commission of crime in question, complicity of applicant is established in the confessional statement of two other accused Monishkant and Gaurav Chaudhri, police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized, inspite of above, learned A.G.A. could not point out any such circumstance from the record necessitating custodial arrest of applicants during pendency of trial, the period of incarceration undergone, the clean antecedents of applicants, 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, applicants have made out a case for bail.

Accordingly, the bail applications are **Allowed**.

Let the applicant- **Ramu @ Ramkumar**, 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 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/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 :- 6.12.2023

Arshad