

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49594 of 2023

Applicant :- Vijay Pal

Opposite Party :- State of U.P.

Counsel for Applicant :- Raja Ullah Khan

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Raja Ullah Khan, 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 Vijay Pal seeking his enlargement on bail in Case Crime No. 263 of 2023, under Sections 302, 201 I.P.C., Police Station- Bilsanda, District-Pilibhit during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 21.07.2023 a delayed F.I.R. dated 24.07.2023 was lodged by the first informant Ramvati (mother of the deceased Ram Kumar) and was registered as Case Crime No. 263 of 2023, under Sections 302, 201 I.P.C., Police Station- Bilsanda, District-Pilibhit. In the aforesaid F.I.R. two persons namely Vijay Pal applicant herein and Raj Kumar have been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that named accused came to the house of the applicant and thereafter, requested the son of the first informant to company them. On this request the son of the first informant accompanied the named accused, They are further alleged to have consumed liquor together. Ultimately, the son of the first informant was put to death.

6. It is apposite to mention here that prior to the F.I.R. aforementioned the dead body of deceased was recovered on 21.07.2023 by one Amit Kumar. On aforesaid prosecution the inquest (Panchayatnama) of the body of the deceased was conducted on 21.07.2023. In the opinion of the witnesses of

inquest(Panch witnesses) the nature of death of deceased was categorized as accidental. However, the exact cause of death could not be specified. Thereafter, the post mortem of the body of the deceased was conducted on 22.07.2023. In the opinion of the autopsy surgeon who conducted autopsy of the body of deceased, the cause of death of deceased was coma, as a result of ante-mortem head injury. The autopsy surgeon found the following ante-mortem injuries on the body of deceased:-

(1) Contusion 07.0 cm x 04.00 cm over Lt. side of skull over parietal & Temporal area.

(2) Contusion 06.50 cm x 04.00 cm over Rt. side of skull in parietal & temporal area.

(3) Contusion 05.0 cm x 04.00 cm on chest over manubrium area.

(4) Contusion 06.00 cm x 2.50 cm over Rt. Shoulder joint.

7. It is after the aforesaid proceedings had been undertaken that the F.I.R. giving rise to the present criminal proceedings was lodged.

8. 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. During course of investigation, Investigating Officer examined the first informant namely Ram Vati (mother of the deceased) who has supported the F.I.R. Apart from above, the Investigating Officer examined the following witnesses under Section 161 Cr.P.C:- one witness namely Ram Vati in her statement under Section 161 Cr.P.C. has clearly stated that the deceased son was in the company of the applicant is going in the direction, where his dead body was found and other three witnesses namely Suresh, Kishan Pal and Shri Ram Kumar in their statements under Section 161 Cr.P.C. have clearly stated that the motive behind the occurrence. On the above evidence, the applicant was arrested on 26.07.2023. On his point out weapon of assault i.e. Danda, which was recovered from an open place. Subsequently, the applicant in his confessional statement before the police has also admitted his criminality in the crime in question. On the basis of above and the other material collected by Investigating Officer he came to the conclusion that complicity of present applicant Vijay Pal and Raj Kumar is established in the crime. Accordingly, he submitted the charge-sheet dated 30.09.2023.

9. Learned counsel for applicant contends that applicant is a named and charge sheeted accused yet he is liable to be enlarged on bail. Present case is a case of circumstantial evidence, therefore, there is no eye-witness of the occurrence. Complicity of an accused in a case based upon circumstantial evidence has to be inferred in accordance with the parameters laid down by the Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra 1984 AIR 1622**. However, upto this stage none of the parameters laid down in aforesaid judgment are satisfied against applicant. The motive that has emerged against applicant as per the statements of the witnesses namely Suresh, Kishan Pal and Shri Ram Kumar is not so clinching so as to infer that there was a strong motive with the applicant to commit the crime in question. Referring to the judgment of the Supreme Court in **Nandu Singh Vs. State of M.P. 2022 SCC Online SC 1434**, it is urged by the learned counsel for applicant that motive plays an important link in the chain of circumstances in a case based on circumstantial evidence. No strong motive has emerged against the applicant, therefore, guilt of applicant cannot be covered in the crime in question. So far as, the recovery of the Danda (weapon of assault) is concerned. Learned counsel for applicant contends that the recovery is false it is implanted. There is no independent witness of recovery. The same has been made from an open place. As such, the same is not worthy of reliance.

10. According to the learned counsel for applicant no conviction of an accused can be based simply on the basis of last seen. He has referred to the judgment of the Supreme Court in **Jaswant Gir Vs. State of Punjab (2005) 12 SCC 438**. On the conspectus of above, it is thus urged that the applicant is liable to be enlarged on bail.

11. 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 26.07.2023. As such, he has undergone more than four months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of 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.

12. Per contra, the learned A.G.A. has opposed the prayer for bail.

He submits that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. According to the learned A.G.A. since, applicant is named accused, the deceased lastly went in the company of the applicant. However, in his confessional statement made before the police, the applicant has not explained the aforesaid circumstances. It is then contended that though confession of an accused by itself is not a substantial piece of evidence, therefore, it is considered as from a deep type of evidence, however, in a case confession made by an accused is corroborated from the material on record then in that eventuality the same is worthy of reliance. When the confessional statement of the accused is examined in the light of corroborating material referred to above, the complicity of the applicant is fully established in the crime in question. Apart from above, motive has also emerged against applicant from committing the crime in question. Weapon of assault has also been recovered on the pointing of applicant. As such, the deceased was a young boy aged about 32 years. 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.

13. When confronted with above, the learned counsel for applicant submits that as per the post mortem report of the deceased he received only four contusion. As such, as per the medical evidence, it is explicit clear that there is no calculated mens rea with the applicant to commit the crime in question. Occurrence had taken place in the spell of intoxication on account of grave and sudden provocation. As such, crime in question is covered under the four exception to Section 300 I.P.C. Resultantly, offence complained of shall fall in the category of culpable homicide not mounting to murder. He, therefore, contends that applicant is liable to be enlarged on bail.

14. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of of record, evidence, complicity of applicant, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that present case is a case of circumstantial evidence, therefore, there is no eye-witness of the occurrence, complicity of an accused in a case based upon circumstantial evidence has to inferred in accordance with the parameters laid down by the Apex Court in the case of **Sharad Birdhichand Sarda (Supra)**, however, upto this stage none of the parameters laid down in aforesaid judgment are satisfied against applicant, the motive that has emerged against applicant as per the statements of the witnesses namely Suresh, Kishan Pal and Shri

Ram Kumar is not so clinching so as to infer that there was a strong motive with the applicant to commit the crime in question, referring to the judgment of the Supreme Court in **Nandu Singh (Supra)**, it is urged by the learned counsel for applicant that motive plays an important link in the chain of circumstances in a case based on circumstantial evidence, no strong motive has emerged against the applicant, therefore, guilt of applicant cannot be covered in the crime in question, the recovery of the Danda (weapon of assault) is concerned, the recovery is false it is implanted, there is no independent witness of recovery, the same has been made from an open place, as such, the same is not worthy of reliance, 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- **Vijay Pal**, be released on bail in aforesaid case crime number on his furnishing a personal bond and two heavy 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 :- 6.12.2023

Imtiyaz