

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48946 of 2023

Applicant :- Brijesh Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Virendra Kumar Yadav

Counsel for Opposite Party :- G.A., Vinay Kumar Singh Chandel

Hon'ble Rajeev Misra, J.

Heard Mr. Virendra Kumar Yadav, the learned counsel for applicant, the learned A.G.A. for State and Mr. Keshri Nandan Singh, Advocate holding brief of Mr. Vinay Kumar Singh Chandel, the learned counsel representing first informant.

This application for bail has been filed by applicant Brijesh Yadav seeking his enlargement on bail in Case Crime No.351 of 2023, under Sections 147, 323, 504, 452, 304 IPC, police station Cholapur, district Varanasi, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 15.08.2023, a prompt FIR dated 15.08.2023 was lodged by first informant, namely, Pintu Rajbhar and was registered as Case Crime No.0351 of 2023, under Sections 147, 323, 504, 452 IPC, police station Cholapur, district Varuna (Commissionerate Varanasi). In the aforesaid FIR, eight persons, namely, Tripesh Yadav; Amarjeet Yadav; Sheetal Yadav; Naresh Yadav; Neeraj Yadav; Brijesh Yadav (applicant herein); Sanjay Yadav and Rishi Yadav have been nominated as named accused.

As per the prosecution story as unfolded in the aforesaid FIR, in the occurrence which occurred on 15.08.2023, nine persons, namely, Mangru Rajbhar; Bechan Rajbhar; Rinku Rajbhar; Sangeeta Devi; Nidi; Shivani; Sarita; Surendra Rajbhar and Brijesh Rajbhar sustained injuries. Subsequently, one of the injured, namely, Mangru Rajbhar succumbed to the injuries sustained by him on 21.08.2023 i.e. after six days of the occurrence. Accordingly, the case was converted under Section 304 IPC.

In respect of the same incident, another FIR dated 15.08.2023 was lodged by first informant, namely, Tripesh Yadav from the side of the applicant and was registered as Case Crime No.0352 of 2023, under Sections 147, 323, 504, 452, 354 IPC, police station Cholapur, district Varuna (Commissionerate Varanasi). In the aforesaid FIR, nine persons, namely, Brijesh; Rinku; Bachche Lal; Surendra; Bablu; Vikas; Gangoli Rajbhar; Jhanna Rajbhar and Deepak have been nominated as named accused. According to the prosecution story as unfolded in the FIR, three persons namely, Naresh; Neeraj and Rishi have

sustained injuries from the side of the applicant.

Learned counsel for applicant contends that since the first information reports have been lodged from both the sides in respect of the occurrence dated 15.08.2023 therefore, the occurrence is admitted to the parties. Injuries have been sustained by persons from both sides. On the above premise, he contends that the primary issue which is required to be decided is as to who is the aggressor. The said issue cannot be decided without evidence being led by the parties. Such a question can more appropriately be decided only during the course of trial. However, up to this stage, no such conclusive evidence has emerged on the record of aforementioned case crime numbers on the basis of which it can be decided as to who is the aggressor in the crime in question. He, therefore, contends that applicant is liable to be enlarged on bail.

Referring to the post-mortem report of the deceased Mangru Rajbhar, copy of which is at page 37 of the paper book, he submits that the deceased has sustained as many as five injuries on his person, out of which two are surgical wounds. Even otherwise, the author of the fatal injury sustained by the deceased has not been given either in the FIR nor specified in the statements of the witnesses examined under Section 161 CrPC. It is thus urged that general role has been assigned to all the accused. As such, in the present case there is nothing on record to distinguish the case of present applicant with other accused so as to deny him bail. It is next contended that since the occurrence has occurred on account of grave and sudden provocation and not on account of any calculated mens-rea or pre-planned act of the applicant therefore, the present case is a case of grave and sudden provocation and is covered under the fourth exception to Section 300 IPC. As such, the offence complained of would not travel beyond Section 304 Part II IPC.

Even otherwise, the applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in jail since 24.08.2023. As such, he has undergone more than three and half months of incarceration. The police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted against the applicant therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. He, therefore, 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.

Per contra, the learned A.G.A. and the learned counsel for first informant have vehemently opposed the prayer for bail. They submit that since the applicant is a named and charge-sheeted accused, inasmuch as, the charge-sheet has been submitted on 03.09.2023 therefore, he does not deserve any indulgence by this Court. Considering the nature and gravity of the offence and coupled with the fact that the criminality committed by the named/charge-sheeted

accused is joint and common therefore, the same is incapable of separation and segregation. As such, no exception can be carved out in the case of present applicant. They, therefore, contend that no sympathy be shown by this Court in favour of the applicant. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that the occurrence giving rise to the present criminal proceeding is admitted to the parties, inasmuch as, cross-first information reports have been lodged from both the sides, there are injured from both the sides, the present case is a case of grave and sudden provocation and same is not the outcome of any calculated mens-rea or pre-planned act of the applicant and other co-accused, in view of above the case in hand is covered under the fourth exception to Section 300 IPC, the offence complained of thus shall be culpable homicide not amounting to murder, the same is prima facie not likely to travel beyond Section 304 Part-II IPC, the primary issue to be decided is as to who is the aggressor, the said issue can more appropriately be answered only during the course of trial, however upto this stage no such evidence has been discovered by the Investigating Officer on the basis of which the aggressor in the crime can be conclusively concluded, the author of the fatal injuries sustained by the deceased has neither been disclosed in the FIR nor specified in the statements of the witnesses examined under Section 161 CrPC, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted against the applicant therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized yet, in spite of above the learned A.G.A. nor the learned counsel for first informant could point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the clean antecedents of applicant, the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant 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.

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

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

(iii) 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., 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, 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 him 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 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.

Rks.