

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 50274 of 2023

**Applicant :-** Sukhveer

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

**Counsel for Applicant :-** Vimlesh Kumar, Sarthak Singh

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

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

Heard Mr. Sarthak Singh, 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 Sukhveer seeking his enlargement on bail in Case Crime No. 42 of 2020, under Sections 302 and 404 IPC, P.S. Charra, District Aligarh, during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred on 17.03.2020, a prompt F.I.R. dated 17.03.2020 was lodged by first informant Chhote Lal and was registered as Case Crime No. 42 of 2020, under Section 302 IPC, P.S. Charra, District Aligarh. In the aforesaid F.I.R., an unknown person has been arraigned as solitary accused.

The gravamen of the allegations made in the F.I.R. is to the effect that first informant namely Chhote Lal had gone to the house of the deceased on the occasion of Holi festival to greet him. However, the door of the house was found locked. Accordingly, call was made on the mobile phone of the deceased, but the same was reported to be switched off. In view of above, information was given to the police and in the presence of the police, the lock was broken. It is thereafter that Gangaram the deceased was found dead inside his home.

After above mentioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr. P. C. The complicity of present applicant in the crime in question emerged on the information given by the police informer. The said fact is clearly explicit from C.D. parcha No. 2. Thereafter, the Investigating Officer collected the C.D.R. report of the mobile phone of applicant and the deceased. As per the said C.D.R.

report of the mobile phone of the applicant and the deceased, the location of the applicant was found in the vicinity of the mobile phone of deceased. On the aforesaid incriminating circumstance Investigating Officer came to the conclusion that complicity of applicant is fully established in the crime in question. He, accordingly, submitted the charge sheet dated 28.5.2020, whereby applicant has been charge sheeted under Sections 302 and 404 IPC.

After charge sheet was submitted, cognizance was taken upon same by concerned Magistrate. However, as offence complained of is triable exclusively by a Court of Sessions, resultantly, concerned Magistrate committed the case to the Court of Sessions. Consequently, Sessions Trial No. 2494 of 2020 (State Vs. Sukhram) came to be registered. However, upto this stage not a single witness has been examined, though a period of 4 years is to about to roll by.

Learned counsel for applicant submits that applicant is innocent. He is not named in the F.I.R. Though applicant is a charge sheeted accused, yet he is liable to be enlarged on bail. Present case is a case of circumstantial evidence. Therefore, there is no eyewitness of the occurrence. The complicity of an accused in a case based on circumstantial evidence can be inferred only in accordance with the parameters laid down by the Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra AIR 1984 SC 1622**. However, up to this stage, none of the parameters laid down in aforementioned judgement of Apex Court is satisfied against the applicant.

It is then contended by the learned counsel for applicant that no recovery has been made either from the person of applicant or on the pointing of applicant. Even though, as per the post mortem report, the deceased had sustained 5 ante mortem injuries, no strong motive has emerged against applicant for committing the crime in question. According to learned counsel for applicant, motive plays an important link in the chain of circumstances in a case based on circumstantial evidence. To buttress his submission, he has referred to the judgement of Supreme Court in **Nandu Singh Vs. State of M.P., 2022 SCC OnLine SC 1454**. There is no evidence of last seen against the applicant either. Since there was no pre-existing enmity in between the applicant and the deceased, therefore no animus can be attached to the applicant for committing the crime in question.

Attention of the Court was then invited to the order sheet of above mentioned sessions trial pending before Court below.

Learned counsel for applicant contends that though a period of almost 4 years is about to roll by, not even a single prosecution witness has appeared before Court below. He, therefore, contends that on account of the lackadaisical approach of the prosecution, the trial is proceeding at a snail's pace. Since applicant is in custody, he cannot be held responsible for the delay in the conclusion of trial. In view of the law laid down by the Apex Court in **R.S. Nayak vs. A.R. Antulay and another, (1986) 2 SCC 716**, the right to speedy trial is now recognized as a fundamental right of the accused. On account of the casual approach of the prosecution, the aforesaid fundamental right of the applicant/accused stands infringed. He therefore, submits that applicant is liable to be enlarged on bail.

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 19.03.2020. As such, he has undergone 4 years and 8 months of incarceration. The charge sheet having been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant now stands crystallized. However, no such circumstance has emerged on the record necessitating the custodial arrest of applicant during the course of trial. On the above premise, 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 the applicant is a charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The C.D.R. report of the mobile phone of the deceased and applicant clearly points at the guilt of the applicant. As such, no sympathy be shown by this Court in favour of applicant.

When confronted with above, the learned counsel for applicant contends that as per the C.D.R. report of the deceased, the last call on the mobile phone of the deceased was made by another person. As such, on the basis of above, the complicity of applicant in the crime in question cannot be conclusively concluded.

Having heard the learned counsel for applicant, the learned A.G.A. for state, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of accused, accusation made and coupled with the fact that applicant is not named in the F.I.R., the applicant has been charge sheeted in the crime in question on the following two incriminating circumstances (a) the C.D.R. report (b) the information given

by the police informer, the aforesaid incriminating circumstances neither singularly nor cumulatively are sufficient enough to infer the guilt of the applicant in the crime in question, since the present case is a case of circumstantial evidence, therefore, there is no eyewitness of the applicant, the complicity of an accused in a case based on circumstantial evidence can be inferred only in accordance with the parameters laid down by the Apex Court in **Sharad Birdhichand Sarda (supra)**, prima facie none of the parameters laid down in aforementioned judgement is satisfied against applicant upto this stage and also the fact that though trial of applicant commenced in the year 2020, and a period of 4 years has rolled by, not a single eyewitness has been adduced by the prosecution till date, as such the applicant is entitled to the benefit of the law laid down by the Apex Court in **R.S. Nayak (supra)**, as right to speedy trial is a fundamental right of an accused, applicant cannot be held responsible for delay in trial since he is in custody, the clean antecedents of applicant, the period of incarceration undergone, 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, the applicant has made out a case for bail.

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

Let the applicant **Sukhveer** 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 :- 15.12.2023**

HSM