

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50988 of 2023

Applicant :- Veer Bahadur Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Jadu Nandan Yadav, Shashank Sharma

Counsel for Opposite Party :- G.A., Dharmala Yadav, Sukesh Kumar

Hon'ble Rajeev Misra, J.

1. Heard Mr. Shashank Sharma along with Mr. Jadu Nandan Yadav, 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 Veer Bahadur Yadav seeking his enlargement on bail in Case Crime No. 279 of 2023, under Sections 302, 34 and 201 IPC, P.S. Badlapur, District Jaunpur, during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 29.09.2023, a delayed F.I.R. dated 01.10.2023 was lodged by first informant Smt. Sandhya Yadav and was registered as Case Crime No. 279 of 2023, under Sections 34, 302 and 201 IPC, P.S. Badlapur, District Jaunpur. In the aforesaid F.I.R., one Deepak Yadav has been nominated as named accused, whereas some unknown persons have also been arraigned as accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that on 29.09.2023 at around 7.30 p.m., the named accused Deepak Yadav came to the house of the first informant and thereafter took the brother of the first informant namely Palalu Yadav along with him. However, ultimately, the brother of the first informant namely Palalu Yadav was put to death by named accused along with his associates.

6. It is apposite to mention here that prior to the lodging of aforementioned F.I.R., the dead body of the deceased was recovered on 30.09.2023 i.e. after one day of the occurrence. Thereafter, the inquest (panchayatnama) of the body of deceased was conducted on the same day i.e. 31.5.2021. According to the learned A.G.A. the nature of death of the deceased in the opinion of the witnesses of inquest (panch witnesses) was categorized as homicidal and the cause of death of deceased was said to be head injury sustained by deceased. Thereafter, the post mortem of the body of the deceased was conducted. The Autopsy Surgeon, who conducted autopsy of the body of deceased, found following ante mortem injuries on the body of deceased:-

"1. Lacerated wound measuring 6 cm x 1 cm x scalp deep underlying left temporal parietal bone fracture seen.

2. Lacerated wound measuring 8 cm x 1 cm x scalp deep over the occipital

protuber and underlying

3. Lacerated wound measuring 4 cm x 1 cm x scalp deep over right temporal parietal bone fractured. Over opening 400 ml of blood clot is seen. Abrasion measuring 6 cm x 4 cm over the inter scapular region extending to the right scapular region over the back of chest."

7. In the opinion of Autopsy Surgeon, the cause of death of deceased was haemorrhagic shock and coma as a result of ante mortem head injury.

8. It is after aforementioned proceedings had been undertaken, that the F.I.R. giving rise to present criminal proceedings was lodged. Investigating Officer accordingly proceeded with the statutory investigation of concerned case crime number under Chapter-XII Cr.P.C. The named accused Deepak was arrested on 2.10.2023. On the pointing of named accused, Deepak, a danda which was having blood stains and alleged to have been used in the commission of the crime in question was recovered as is evident from the recovery memo, copy of which is on record at page 30 of the paper book. Apart from above, Adhar Card of the deceased and a charger were also recovered. There are six independent witnesses named in the said recovery memo. Thereafter, the statement of named accused Deepak was recorded, wherein the name of present applicant surfaced in the crime in question, inasmuch as applicant is alleged to have provided the danda to accused Deepak which was used in the commission of crime. As per the confession made by the co-accused Deepak, the deceased was assaulted by the accused Deepak himself. However, no motive to commit the crime in question has emerged against applicant. The motive which has emerged is against Deepak the named accused who is alleged to have relationship with the niece of the deceased and therefore, he decided to eradicate him.

9. On the basis of above, present applicant was arrested on 03.10.2023. Investigating Officer further examined various other witnesses under Section 161 Cr.P.C. who have supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of named accused Deepak and present applicant is fully established in the crime in question. He, accordingly, submitted the charge sheet dated 17.10.2020 whereby named accused Deepak and present applicant have been charge sheeted under Sections 302, 201 IPC.

10. Learned counsel for applicant submits that applicant is innocent. Applicant is not named in the FIR. He further submits that though the 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 eye witness of the occurrence. The complicity of an accused in a case based on circumstantial evidence has to be inferred in accordance with the parameters laid down by the Apex Court in ***Sharad Birdhichand Sarda Vs. State of Maharashtra AIR 1984 SC 1622 (Paragraph 152)***. However, up to this stage, none of the parameters laid down by the Apex Court in aforementioned judgment is satisfied against applicant. There is no evidence of last seen against applicant nor any recovery has been made from the person of applicant or on the pointing of applicant. No strong motive has emerged against applicant for committing the crime in question. Motive plays an important link in the chain of circumstances in a case based on circumstantial

evidence vide **Nandu Singh Vs. State of M.P., 2022 SCC OnLine SC 1454**, he, therefore, submits that since no motive has emerged against applicant for committing the crime in question, applicant is liable to be enlarged on bail. He further submits that there was no previous enmity in between the deceased and the applicant and therefore, no animus can be gathered against the applicant for committing the crime in question. The only incriminating circumstance that has emerged against applicant for implicating him in the crime in question is the confessional statement of co-accused Deepak.

11. With reference to Sections 25 and 26 of the Evidence Act, he submits that confession of an accused made while in custody is not admissible in evidence, wherein it has been stated that the weapon of assault i.e. danda was provided by the applicant. However, that by itself will not lead to an offence under Section 34 IPC. On the above premise, he, therefore, contends that applicant is liable to be enlarged on bail.

12. 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 03.10.2023. As such, he has undergone more than 1 and 1/2 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, up to this stage, no such circumstance has emerged from the record necessitating the custodial arrest of the 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.

13. Per contra, the learned A.G.A. and the learned counsel representing first informant have opposed the prayer for bail. They submit that as per the confessional statement of named accused Deepak, the weapon of assault was provided by the applicant himself. Applicant has been charge sheeted under Section 34 IPC also. As such, there was a common intention with the applicant and other co-accused to commit the crime in question. The criminality committed by the charge sheeted accused is joint and common. As such, the same is incapable of separation or segregation. It is thus urged that 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 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.

14. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, 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, the guilt of an accused in a case based on circumstantial evidence has to be inferred in accordance with the parameters laid down in the case of **Sharad Birdhichand Sarda (Supra)**, however, up to this stage, none of the parameters laid down by the Apex Court in aforementioned judgment is satisfied against applicant, there is no evidence of last seen nor any recovery has been made from the person of applicant or on the pointing of applicant, no

strong motive has emerged against applicant to commit the crime in question, motive plays an important link in the chain of circumstances in a case based on circumstantial evidence vide **Nandu Singh (Supra)**, there was no previous enmity in between the deceased and the applicant and therefore, no animus can be gathered against the applicant for committing the crime in question, the only incriminating circumstance that has emerged against applicant for implicating him in the crime in question is the confessional statement of co-accused Deepak, with reference to Section 25 of the Evidence Act, confession of an accused made while in custody is not admissible in evidence, confession is a weak type of evidence, same can be relied upon provided it gets corroborated from other evidence, upto this stage, there is no evidence to corroborate the confession of accused and implicate the applicant in the crime in question, the judgement of Apex Court in **Kashmira Singh Vs. State of Punjab, AIR 1952 SC 159**, the clean antecedents of applicant, the period of incarceration undergone, 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 stands crystallized, yet in spite of above, the learned A.G.A. and the learned counsel representing first informant 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. and the learned counsel representing first informant in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

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

15. Let the **applicant-Veer Bahadur Yadav**, be released on bail in the 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.

16. 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 :- 29.11.2023
HSM