

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51197 of 2023

Applicant :- Pradeep Kumar Chaurasiya

Opposite Party :- State of U.P.

Counsel for Applicant :- Ishan Deo Giri, Sikandar B. Kochar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Gopal Swaroop Chaturvedi, the learned Senior counsel assisted by Mr. Ishan Deo Giri, 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 Pradeep Kumar Chaurasiya seeking his enlargement on bail in Case Crime No. 272 of 2023, under Sections 302, 201, 147, 34 IPC, P.S. Sadar, District Shahjahanpur, during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred on 11.04.2023, a delayed F.I.R. dated 12.04.2023 was lodged by first informant Adhish Jauhari and was registered as Case Crime No. 272 of 2023, under Sections 302, 34, 147 IPC, P.S. Sadar, District Shahjahanpur. In the aforesaid F.I.R., six persons namely Neeraj Gupta, Bankim Suri, Kunal Arora, Shivam Gupta, Accountant of Neeraj Gupta and Keshav have been nominated as named accused, whereas some unknown persons have also been arraigned as accused.

After above mentioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned crime number in terms of Chapter XII Cr. P. C. The inquest (*panchayatnama*) of the body of deceased was conducted. In the opinion of witnesses of inquest (*panch* witnesses), the death of deceased was suspicious. However, neither the nature of death nor the cause of death could be categorized or specified. Thereafter, post mortem of the body of deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the dead body of deceased, the cause of death of deceased was said to be shock and haemorrhage as a result of ante mortem injuries sustained by the deceased. The

Autopsy Surgeon found following ante mortem injuries on the body of the deceased:-

- 1. Lt. 1 cm x 0.5 cm present on right side parietal region 7 cm above right ear.**
- 2. Contusion 5 cm x 3 cm Rt. Arm 2 cm. below elbow joint other contusion 4 x 2 cm anterior aspect of forearm.**
- 3. Multiple contusion layment 4 x 2 cm smallest 2 x 1 cm total 4 in number congenital contusion 3 cm below shoulder joint (anterior)**
- (4) Contusion Lt. Arm post side 20 x 12 cm multiple contusion 4 x 2 cm congenital 2 x 1 cm smallest 4 in number on post side.**
- (5) Contusion 15 cm x 20 cm Rt. Leg on thigh region. Multiple congenital 4 x 2 smallest 2 x 1.5 cm total 6 in no. on ant. side below 3 cm**
- (6) Contusion 16 x 15 cm on Lt. Thigh out side. Multiple on post side congenital 6 x 1 cm smallest 2 x 1 cm 6 in number**
- (7) Rt. Buttock contusion 3.0 x 19 cm**
- (8) Lt. Buttock contusion 26 x 15 cm**
- (9) Multiple contusion on back congenital 24 x 15 smallest 3 x 2 cm. total 5 in number**
- (10) Contusion Lt. Leg 16 x 12 cm 2 cm. below later on side.**
- (11) Contusion Rt. Leg 16 x 16 cm 4 cm below later on post side.**
- (12) Multiple contusion on rt. side congenital 4 x 2 cm smallest 1.5 x 1.5 total 4 in number.**

During course of investigation, Investigating Officer examined first informant and following witnesses under Sections 161 Cr. P. C. ; (1) Rati Ram, (2) Amir, (3) Farid, (4) Vikas and (5) Adish Jauhari (Informant).

Complicity of the present applicant emerged in the statements of two witnesses namely Farid and Vikas, who are said to be eye witnesses of the occurrence. On the basis of above, he was arrested on 17.4.2023. On the pointing of applicant a piece of garden pipe was recovered from the applicant. On the basis of above and other material collected by the Investigating Officer, he came to the conclusion that complicity of applicant is also established in the crime in question. He, accordingly, submitted the charge sheet dated 16.4.2023, whereby following 9 persons have been charge sheeted under Sections 302, 201, 147, 34 IPC.

Learned Senior counsel for applicant submits that applicant is not named in the F.I.R. The complicity of applicant in the crime in question has emerged as per the statements of two eye witnesses namely Farid and Vikas. However, the aforesaid witnesses have not specified any specific role to applicant which could be distinguishable from other charge sheeted accused. Attention of the Court was invited at this juncture to post mortem report. After the post mortem report of the deceased, he did not receive any singular fatal injury. Thus general role is attributable to all the accused. He then submits that following 7 co-accused have already been enlarged on bail.

(1) Criminal Misc. Application No. 34748 of 2023 (Neeraj Gupta Vs. State of U.P.), vide order dated 25.08.2023.

(2) Criminal Misc. Application No. 52029 of 2023 (Nadeem Vs. State of U.P.), vide order dated 05.12.2023

(3) Bail Application No. 1592 of 2023 (Bankim Soori Vs. State of U.P.) vide order dated 26.7.2023 passed by Sessions Judge, Shahjahanpur

(4) Bail Application No. 1916 of 2023 (Raghav Gupta Vs. State of U.P.) vide order dated 03.7.2023 passed by Sessions Judge, Shahjahanpur

(5) Bail Application No. 1917 of 2023 (Govind Gupta Vs. State of U.P.) vide order dated 03.7.2023 passed by Sessions Judge, Shahjahanpur

(6) Bail Application No. 1961 of 2023 (Kunal Arora Vs. State of U.P.) vide order dated 05.7.2023 passed by Sessions Judge, Shahjahanpur

(7) Bail Application No. 1917 of 2023 (Keshav Vs. State of U.P.) vide order dated 26.7.2023 passed by Sessions Judge, Shahjahanpur

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 17.04.2023. As such, he has undergone more than seven and a half 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, upto this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency 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. Criminality committed by the applicant and other charge sheeted accused is joint and common, therefore, same is incapable of separation or segregation. As such, no exception can be carved out in the case of applicant. However, he 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, upon perusal of material brought on record, nature of offence, evidence, complicity of accused, accusation made and coupled with the fact that the applicant is not named in the F.I.R., complicity of applicant has emerged also in the statements of two eye witnesses namely Farid and Vikas, general role is assigned to all the accused, the death of the deceased cannot be attributed to singular act of applicant. 7 co-accused have already been enlarged on bail.

The charge sheet having been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant now stands crystallized, yet the learned A.G.A. could not point out any such distinguishable feature in the case of applicant so as to distinguish the case of present applicant from other accused and deny him bail, in spite of above, yet the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of the applicant during the pendency of trial, clean antecedents of applicant, 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 **Pradeep Kumar Chaurasiya** 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 :- 13.12.2023

HSM