Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51313 of 2023

Applicant :- Munna
Opposite Party :- State of U.P.
Counsel for Applicant :- Janardan Yadav
Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Heard learned counsel for the applicant and learned A.G.A for the State.

There is general allegation against the applicant and six co-accused of committing the offence of murder of husband of victim after beating and threatening with common object. Learned counsel for the applicant has submitted that one of the co-accused, Pappu has been enlarged on bail vide order dated 9.11.2023 in Criminal Misc. Bail Application No. 48568 of 2023 by following order:-

"The instant application has been filed seeking release of the applicant on bail in Case Crime No. 360 of 2023, under Sections 323, 302, 504, 506, 307, 308, 34 IPC, Police Station- Nizamabad, District- Azamgarh during pendency of the trial in the court below.

FIR of the present case was lodged against applicant and six others under Sections 323, 504, 506, 307,308, 34 IPC and according to the FIR, on 14.08.2023 at about 5:00 p.m. applicant and other accused persons made assault upon husband of the informant though lathi danda and spade and due to assault made by them, her husband sustained injury on his head and fainted and when informant tried to save him then they also made assault upon her and due to that she sustained injury on her leg.

Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and only general and omnibus allegation has been levelled in the FIR and in the

statements of the witnesses including informant. He further submitted that post mortem report of the deceased suggests that he sustained six injuries but only two injuries were on his head and there is no evidence on record, which can show that applicant is the author of these two injuries and according to the doctor, deceased died due to head injury.

He further submitted that co-accused Dhunnu has been enlarged on bail by co-ordinate Bench of this Court today i.e. on 09.11.2023 and case of applicant is at par with him.

He further submitted that applicant is not having any criminal history and he is in jail since 17.08.2023.

Per contra, learned AGA as well as learned counsel for the informant although, opposed the prayer for bail but could not dispute the fact that co-accused Dhannu has been enlarged on bail by co-ordinate Bench of this Court and case is applicant is at par with him.

I have heard learned counsel for the parties and perused the record of the case.

From the record, it reflects that on the basis of general allegation, applicant has been made accused in the present matter alongwith six others and although, deceased sustained six injuries but he died due to head injury and post-mortem report of the deceased suggests that he sustained two injuries on his head and there is no evidence on record, which can show that applicant is the person, who caused these injuries to the deceased.

Further, bail application of co-accused Dhunnu has been allowed by co-ordinate Bench of this Court vide Criminal Misc. Bail Application No. 48531 of 2023 and case of applicant is at par with him.

The Apex Court in the case of Satender Kumar Antil Vs. CBI & another (2022) 10 SCC 51 in paragraph no. 98 has observed that-

Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons

accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.

Therefore, considering the facts and circumstances of the case discussed above, particularly the fact that co-accused Dhunnu has been released on bail and case of applicant is at par with him, in my view applicant is also entitled to be released on bail on the ground of parity itself.

Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

Let the applicant- Pappu be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial. "

Learned counsel for the applicant has submitted on similar role three co-accused, Chhannu @Dhannu, Bahadur and Lalta have already been enlarged on bail vide orders dated 9.11.2023 and 17.11.2023 vide Criminal Misc. Bail Application Nos.48531,47040, 48491 of 2023. Co-accused, Nanhu has also been enlarged on bail by order of date in Criminal Misc. Bail Application No. 48613 of 2023.

The case of the applicant stands on identical footing, hence the applicant is also entitled for bail for the reasons given in bail application of the aforesaid co-accused on the ground of parity. The applicant is in jail since 15.8.2023.

On the other hand learned A.G.A has opposed the prayer for bail.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties, larger mandate of the Article 21 of the Constitution of India, considering the recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021 and considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant, Munna, involved in Case Crime No. 360 of 2023, under Sections 147,149,323,302,504,506,307,308, 34 IPC, Police Station- Nizamabad District- Azamgarh, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.

2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.

3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

4. That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 to ensure presence of the applicant.

6. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Order Date :- 6.12.2023
Atul kr. sri.

Digitally signed by :-
ATUL KUMAR SRIVASTAVA
High Court of Judicature at Allahabad