

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51843 of 2023

Applicant :- Smt. Maya Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajendra Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Ram Yash Pandey, Advocate holding brief of Sri Rajendra Kumar, learned counsel for the applicant, Sri Virendra Pratap Singh, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Smt. Maya Devi, seeking enlargement on bail during trial in connection with Case Crime No. 151 of 2023, under Sections 147, 323, 504, 506, 308, 304 I.P.C., registered at Police Station Dildarnagar, District Ghazipur.

4. Learned counsel for the applicant at the very outset submits that co-accused Hridya Narayan Yadav has been granted bail by a co-ordinate Bench of this Court vide order dated 26.10.2023 passed in Crl. Misc. Bail Application No. 44963 of 2023 (Hridya Narayan Yadav Vs. State of U.P.), copy of the order is annexed as annexure 6 to the affidavit. Further it is argued that co-accused Ram Iqbal Yadav @ Akbar Yadav and Sarvesh Yadav have also been granted bail by another Bench of this Court vide order dated 20.11.2023 passed in Crl. Misc. Bail Application No. 49117 of 2023 (Ram Iqbal Yadav @ Akbar Yadav and another Vs. State of U.P.), copy of the order has been produced before the Court which is taken on record. It is further argued that the case of the applicant is identical with that of co-accused who have been granted bail and as such he claimed parity. It is further argued that the applicant is a lady and she is entitled to the benefit of Section 437 Cr.P.C. It is further argued that the applicant has no criminal history as stated in para 22 of the affidavit and is in jail since 05.11.2023.

5. Per contra, learned counsel for the State opposed the prayer for

bail but could not dispute the fact that the said three co-accused have been granted bail.

6. After having heard learned counsels for the parties and perusing the records, it is evident that the order of co-accused Hridya Narayan Yadav has been granted bail which reads as under:-

"1. List has been revised.

2. Heard Sri Ram Yash Pandey, Advocate holding brief of Sri Rajendra Kumar, learned counsel for the applicant, Sri Roshan Kumar Singh, learned A.G.A. for the State and perused the material placed on record.

3. Applicant seeks bail in Case Crime No.151 of 2023, under Sections 147, 323, 504, 506, 308 and 304 I.P.C., Police Station Dildarnagar, District Ghazipur, during the pendency of trial.

4. As per prosecution story, the applicant alongwith five other named accused persons are stated to have assaulted the informant and his family members on 13.9.2023 at about 7:30 p.m., thereby causing injuries four persons in all, namely, Rajendra Yadav, Rudal Yadav, Priyanka Yadav and Devanti Devi.

5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. The FIR is delayed by about 14 hours and there is no explanation of the said delay caused. Learned counsel has further stated that out of the four injured persons, one Rajendra Yadav, had expired as such the case was transformed under Section 304 I.P.C. There is cross version to the present case as NCR No.99 of 2023 was instituted on behalf of the applicant against the informant and other family members, whereby four persons from the side of the applicant had also sustained injuries, namely, Prabhawati Devi, Ram Ekbal Yadav, Sarvesh Yadav and Maya Devi.

6. Learned counsel for the applicant has further stated that the said NCR was instituted on 14.9.2023 at about 12:42 p.m. the same day of lodging of the FIR. At this point of time, it cannot be ascertained as to which party was the aggressor, as such the applicant is entitled for bail. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. There is no criminal history of the applicant. The applicant is languishing in jail since 16.09.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

7. Learned A.G.A. has vehemently opposed the bail application but has not disputed the said factum of criminal history and the cross case.

8. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, 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.

9. Let the applicant- Hridya Narayan Yadav, who is involved in aforementioned case crime 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.

(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 IPC.

(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 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 him in accordance with law.

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

11. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses."

7. Further, co-accused Ram Iqbal Yadav @ Akbar Yadav and Sarvesh Yadav have been granted bail by another Bench of this Court which reads as under:-

"1. Heard Shri Ram Yash Pandey, learned counsel for the applicants, Shri Amar Nath Verma, learned Brief Holder for the State-respondent.

2. The instant application has been filed seeking release of the applicants on bail in Case Crime No.151 of 2023, under Section 147, 323, 504, 506, 308, 304 I.P.C., Police Station Dildarnagar, District Ghazipur, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 14.09.2023, under Section 147, 323, 504, 506, 308 I.P.C. against applicants and four others and according to the FIR, on 13.09.2023 at about 7:30 p.m. in the evening applicants and other accused persons made assault upon informant and others through wooden sticks and due to the assault made by them, father, brother and bhabhi of the informant sustained injuries.

4. Learned counsel for the applicants submits that initially F.I.R. of the present case was lodged, under Sections 147, 323, 504, 506, 308 I.P.C. but after the death of the father of the informant, case was converted under Section 304 I.P.C. He further submits that in the incident, it is alleged that one person died and three persons sustained injuries but on the basis of general and omnibus allegation, applicants have been made accused alongwith four others. He further submits that from the post-mortem report of the deceased, it appears that he died due to head injury and there is no evidence on record, which can show that applicants are the author of this injury.

5. Learned counsel for the applicants next submits that co-accused Hridya Narayan Yadav has already been released on bail by a Co-ordinate Bench of this Court vide order dated 26.10.2023 passed in Criminal Misc. Bail Application No.44963 of 2023. The bail order of the co-accused Hridya Narayan Yadav is on record at Annexure No.6 to the affidavit filed in support of the instant bail application and as per the F.I.R., the case of the applicants are at par with him.

6. He next submits that applicants are not having any criminal history and they are in jail in the present matter since 16.09.2023, therefore, they may be released on bail.

7. Per contra, learned AGA opposed the prayer for bail and submits that statements of the

injured persons have not been annexed alongwith the instant bail application and from their statements, it appears that the case of the applicants is distinguishable from the case of co-accused Hridya Narayan Yadav. He further submits that as per the statements of the injured witnesses, co-accused Hridya Narayan Yadav and two others made assault through kicks and fists while applicants and one another made assault through wooden sticks and therefore, on the ground of parity of the bail order of the co-accused Hridya Narayan Yadav, applicants should not be released on bail. However, he could not dispute the facts that no specific allegation has been levelled against the applicants and as per the allegation made by injured witnesses, applicants and one another made assault through wooden sticks and post-mortem report of the deceased suggests that deceased died due to head injury. He further could not dispute the fact that there is no allegation against the applicants that they caused head injury to the deceased.

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

9. However, from the record, it reflects that in the alleged incident one person died and three persons sustained injuries and from the statements of the three injured persons, which were produced by the learned A.G.A. during the course of the argument, it appears that applicants and one another made assault through wooden sticks but as per the post-mortem report of the deceased, he sustained one lacerated wound on his head and two abrasions on left eye and right wrist joint and therefore, it appears that he died due to head injury and there is no evidence on record, which can show that applicants are the persons, who caused head injury to the deceased

10. Further, in the F.I.R. only general role has been assigned to all the accused persons including co-accused Hridya Narayan Yadav and co-accused Hridya Narayan Yadav has already been enlarged on bail by a Co-ordinate Bench of this Court vide order dated 26.10.2023 and his bail order has been appended alongwith instant bail application.

11. Further, applicants are not having any criminal history and they are in jail in the present matter since 16.09.2023.

12. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicants are entitled to be enlarged on bail.

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

14. Let the applicantss-Ram Iqbal Yadav Alias Akbar Yadav and Sarvesh Yadav, 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 applicants shall appear before the trial court on the dates fixed, unless their personal presence are exempted.

(ii) The applicants 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 applicants shall not indulge in any criminal and anti-social activity.

15. 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 applicants.

16. 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."

8. Looking to the facts and circumstances of this case, the nature

of evidence, considering the fact of parity and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant **Smt. Maya Devi**, be released on bail in the aforesaid case crime number on 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure 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 her, in accordance with law, under section 174-A I.P.C.

(v) 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 her in accordance with law and the trial court may proceed against her under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be

verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is ***allowed***.

Order Date :- 11.12.2023

M. ARIF

(Samit Gopal, J.)