

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52412 of 2023

Applicant :- Narsingh @ Kallu

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Rai, Pavan Kumar Pandey

Counsel for Opposite Party :- G.A., Babban Singh
Rathore, Diwakar Shukla

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52343 of 2023

Applicant :- Jay Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Rai, Pavan Kumar
Pandey, Sr. Advocate

Counsel for Opposite Party :- G.A., Babban Singh
Rathore, Diwakar Shukla

Hon'ble Rajeev Misra, J.

1. Heard Mr. Mangla Prasad Rai, the learned Senior Counsel assisted by Mr. Ashok Kumar Rai, the learned counsel for applicants and the learned A.G.A. for State.

2. Perused the record.

3. These applications for bail have been filed by applicants- Narsingh @ Kallu and Jay Singh, seeking their enlargement on bail in Case Crime No. 174 of 2023, under Sections 302, 201, 34 IPC, Police Station-Kishanpur, District-Fatehpur during the pendency of trial.

4. Record shows that an FIR dated 30.06.2023 was lodged by first informant-Randheer Singh (brother-in-law of deceased) and was registered as Case Crime No. 174 of 2023, under Sections 302, 201, 34 IPC, Police Station-Kishanpur, District-Fatehpur. In the aforesaid FIR, 4 persons namely (1) Radhika, (2) Guddu, (3) Narsingh and (4) Jay Singh have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect

that brother-in-law of first informant (Sala) was having love relationship with one Radhika. The FIR records that Radhika called the brother-in-law of first informant on mobile phone. The deceased went to meet Radhika and the named accused with common object are alleged to have assaulted the brother-in-law of first informant on account of which, he died. Thereafter, the dead body of deceased was thrown in open field.

6. It is apposite to mention here that the information regarding the death of deceased was given by the Village Chaukidar Dharmendra Kumar. Accordingly, the dead body of deceased was recovered by the police on 30.06.2023 at 06:30 AM. The brother of deceased i.e. Randheer Singh identified the dead body of deceased. On the aforesaid information, the inquest (*Panchayatnama*) of the body of deceased was conducted on 30.06.2023. In the opinion of the witnesses of inquest (*Panch witnesses*), the nature of death of deceased was categorized as homicidal and the cause of death of deceased was specified as injuries inflicted on the body of deceased.

7. After proceedings of inquest had been undertaken, aforementioned FIR was lodged. Subsequent to above, the post mortem of the body of deceased was conducted on 01.07.2023. The Autopsy Surgeon, who conducted autopsy of the body of deceased, opined that the cause of death of the deceased was Comma as a result of ante-mortem head injuries. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

Ante-Mortem Injuries.

- "1. Contusion of size 5 x 4 cm present on Lt. side of face.***
- 2. Contusion of size 6 x 4 cm present on Rt. side of face.***
- 3. Contused swelling of size 10 x 8 cm present on Lt. arm involving elbow with fractural unfix lying.***
- 4. Contused swelling 18 x 15 cm present over back region.***
- 5. Contused swelling of size 22 x 15 cm present on Lt. side frontal, tempo parietal and occipital region."***

Head -

Scalp - As noted on direction Haemotoma present on Lt. side frontal temporal parietal and occipital reigion.

Membrane - Lacerated with 150 ml blood and clot present.

Brain - Lacerated"

8. Investigating Officer, accordingly, proceeded with statutory investigation of concerned case crime number in terms of Chapter-

XII Cr.P.C. Investigating Officer recorded the statements of the following witnesses under Section 161 Cr.P.C.:-

- (i). Randheer Singh (First Informant),
- (ii). Smt. Sonam Devi (owner of recovered motorcycle)
- (iii). Awadhesh Singh (husband of motorcycle owner)
- (iv). Dharmendra Singh (elder brother of deceased)
- (v). Maghi Dayal (mama of deceased)
- (vi). Jhoori Devi (Mami of deceased)
- (vii). Komal Singh (witness of last seen)
- (viii) Ram Singh (witness of last seen)
- (xiv) Rajendra Singh (Shop keeper/witness of last seen)

9. On the basis of statements of aforementioned witnesses, Investigating Officer came to the conclusion that prima-facie the complicity of 5 persons namely (1) Guddu Singh @ Guddey, (2) Narsingh, (3) Jai Singh, (4) Nitin Singh and (5) Radhika Singh has emerged in the crime in question. He accordingly arrested aforementioned accused on 02.07.2023.

10. On the pointing of named accused, the weapon of assault (Lathi) was recovered from the house of named accused. Apart from above, a broken mobile phone of deceased was also recovered from the house of applicant on the pointing of named accused. The SIM card of mobile phone of deceased was recovered from the person of accused Nitin Singh at the time of his arrest. A Motorcycle without number plate was also recovered, immediately after all the named accused were arrested by the police from the place of their arrest. Subsequently, Investigating Officer obtained the call detail reports (CDR) of deceased Mahendra Singh bearing Mobile Number 9161349592. As per the said CDR, number of calls were made by Radhika Singh from her Mobile No. 7600420108 to the deceased. The last call was made on 29/30.06.2023 at 00:00 hours. Subsequently, the statement of the accused i.e. Guddu Singh @ Guddey, Narsingh, Jai Singh, Nitin Singh and Radhika Singh were recorded, wherein they confessed the criminality committed by them. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of aforementioned accused is fully established in the crime in question. He, accordingly, submitted the charge sheet dated 17.08.2023 whereby above-mentioned accused have been charge sheeted under Sections 302, 201, 34 IPC.

11. Mr. Mangla Prasad Rai, the learned Senior Counsel for

applicants contends that 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 applicants. It is then contended that since there was no pre-existing enmity in between the applicants and the deceased, therefore, no animus can be attached to the applicants for committing the crime in question. The complicity of applicants in the crime in question is sought to be alleged on the basis of theory of last seen which has emerged in the statements of three witnesses examined under Section 161 Cr.P.C. namely (1) Rajendra Singh, (2) Komal Singh and (3) Ram Singh. He, however, contends that in view of the law laid down by the Apex Court in ***Jaswant Gir Vs. State of Punjab (2005) 12 SCC 438*** and (2) ***Jabir Vs. State of Uttarakhand, 2023 SCC OnLine SC 32***, no conviction can be based only on the basis of last seen. With regard to the recoveries made by the Investigating Officer i.e. SIM card of the mobile phone (alleged to be that of deceased) from accused Nitin Singh, the recovery of a motorcycle from the place and at the time of arrest of accused, the recovery of the murder weapon from the house of applicants, broken mobile phone (alleged to be that of deceased), which fact is established from the C.D. Parcha No. 2 of the case diary are not worthy of reliance. Up to this stage, the involvement of the recovered motorcycle has not yet been specified. Simply on the basis of recovery of broken mobile phone of deceased and the SIM card, it cannot be said that applicants are guilty of committing the crime in question. No attempt has been made by the Investigating Officer to ascertain that broken mobile phone and the recovered SIM card from the person of named accused Nitin belong to the case diary inasmuch as, there is no Parcha in the case diary to that effect. The weapon of assault (3 Dandas) though recovered on the joint pointing of some of the accused but the same did not have any blood stains. The same has also been sent to the F.S.L. Laboratory for chemical examination but the F.S.L. report has not yet been received. There is no independent witness of the alleged recoveries. The same is implanted and therefore, unworthy of reliance. The motive that has been attached to the applicants for committing the crime in question is that the deceased was having illicit relations with Radhika Singh (co-accused). The same is sought to be established as per the CDR report of deceased and Radhika Singh. Admittedly, the contents of the conversation which

took place in between the parties i.e. Radhika Singh and Mahendra Singh (deceased) is not part of record, therefore, simply on the ground that there was regular communication between the deceased and Radhika Singh, no strong motive can be attached to the applicants for committing the crime in question. The confession of co-accused Radhika Singh is to the effect that she was in relationship with the deceased does not stand corroborated with any material on record. It is well settled that confession is a very weak type of evidence and can be relied upon only it stands corroborated with other material on record. In support of above, the learned Senior Counsel has referred to the judgment of Supreme Court in **Kashmira Singh Vs. State of M.P. 1952 (1) SCC 275**. On the above conspectus, the learned Senior Counsel for applicants contends that applicants are liable to be enlarged on bail.

12. Even otherwise, applicants are men of clean antecedents inasmuch as, they have no criminal history to their credit except the present one. Applicants are in jail since 02.07.2023. As such, they have undergone more than 5 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 applicants stands crystallized. However, up to this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicants during the pendency of trial. On the above premise, he submits that applicants are liable to be enlarged on bail. In case, the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

13. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicants are named as well as charge sheeted accused, therefore, they do not deserve any indulgence by this Court. The complicity of applicants in the crime in question stands fully established as per the recoveries made on the pointing of charge sheeted accused as well as their confessional statements. The material that has emerged on record clearly corroborates the confession made by the charge sheeted accused. As such, no sympathy be shown by this Court in favour of applicants. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicants in support of the present applications for bail with reference to the record at this stage.

14. Having heard, the learned Senior Counsel for applicants, the learned A.G.A. for State, 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 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 (Supra)**, however, up to this stage, none of the parameters laid down by the Apex Court in aforementioned judgment is satisfied against applicants, no animus can be gathered against the applicants for committing the crime in question as there was no pre-existing enmity in between the applicants and the deceased, no conviction of applicants can be based on the theory of last seen which has emerged against applicants as per the statements of witness (1) Rajendra Singh, (2) Komal Singh and (3) Ram Singh, in view of law laid down by Apex Court in **Jaswant Gir (Supra)** and **Jabir (Supra)**, the recoveries made from the person of accused and on the pointing of accused i.e. the mobile SIM from the person of accused Nitin Singh, a motorcycle at the time and place of arrest of accused, the broken mobile phone of deceased, the weapon of assault i.e. 3 Dandas, the motive behind the occurrence, is said to be illicit relations between Radhika Singh and the deceased Mahendra Singh, which is sought to be established on the basis of CDR reports of the mobile phone of deceased and Radhika Singh, even if, considered singularly or cumulatively cannot lead to the conclusion beyond doubt qua the guilt of applicants in the crime in question, the recoveries are said to be implanted, there is no independent witness of recoveries, no attempt has been made by the Investigating Officer to identify that the mobile SIM and the broken mobile phone belong to the deceased inasmuch as, there is no Parcha in the case diary to that effect, the weapon of assault i.e. 3 Dandas is alleged to have been made from the house of applicants on the joint pointing of three of the accused, however, the same was not having blood stains nor the F.S.L. report regarding the same has been received as yet, the involvement of the motorcycle recovered from the place of arrest of accused in the crime in question has not yet been identified, since the contents of CDR are not yet available, therefore, the exact import of the conversation in between Radhika Singh and Mahendra Singh (deceased) cannot be gathered, the motive which has been assigned to the applicants for committing the crime in question stands substantiated only by the confessional statement of one of the accused Radhika Singh, however, she has not been charge sheeted as an accused, it is well settled that confession is a very weak type of evidence and can be relied upon only when it gets corroborated, the judgment of Supreme Court in **Kashmira Singh (Supra)**, the confession made by the other co-accused

cannot be read against another co-accused, the clean antecedents of applicants, 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 applicants stands crystallized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicants during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. 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.

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

16. Let the **applicant-Narsingh @ Kallu and Jay Singh**, 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.

17. 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 :- 20.12.2023

Vinay