

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53039 of 2023

Applicant :- Dhirendra Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- V.K. Baranwal, Arun Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri V.K. Baranwal, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I 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- **Dhirendra Kumar**, seeking enlargement on bail during trial in connection with Case Crime No. 336 of 2022, under Sections 323, 504, 506, 304 I.P.C., Police Station Phaphamau, District Prayagraj.
4. Learned counsel for the applicant at the very outset argued that the present case is a case of parity. It is argued that co-accused Virendra Kumar Patel has been granted bail by a co-ordinate Bench of this Court vide order dated 19.09.2023 passed in Criminal Misc. Bail Application No. 40508 of 2023, the copy of the said order is annexed as Annexure-12 to the affidavit. It is further argued that co-accused Jitendra Patel has also been granted bail by a co-ordinate Bench of this Court vide order dated 22.11.2023 passed in Criminal Misc. Bail Application No. 49681 of 2023, the copy of the said order has been produced before the Court which is taken on record. While placing paragraph 23 of the affidavit it is argued that the applicant has never been convicted in any criminal case. The applicant is in jail since 05.10.2023.
5. *Per contra*, learned A.G.A. opposed the prayer for bail.
6. After having heard learned counsel for the parties and perusing the record, it is evident that co-accused Virendra Kumar Patel has been granted bail by a co-ordinate Bench of this Court. The said order reads as under:-

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

2. This is second bail application of the applicant.

3. The first bail application of the applicant was rejected on 01.02.2023 by the coordinate Bench of this Court directing the trial court to conclude the trial against the applicant expeditiously preferably within six months from the date of production of certified copy of the order.

4. Learned counsel for the applicant submits that till date only one prosecution witness has been examined out of 19 before the trial Court. The implication is under Section 304 IPC. Trial is not likely to be concluded in near future. The applicant is in jail since 19.11.2022 and has criminal history of one case wherein charge sheet has

not been submitted till date.

5. Learned counsel for the informant, Sri Krishna Dutt Tiwari, has vehemently opposed the bail application of the applicant. He has submitted that the brother of the applicant, Dharendra Kumar, is absconding and he is not surrendering before the trial Court as a result of which his trial has been separated and in case the applicant is enlarged on bail he will also abscond from the proceedings.

6. On the other hand, learned A.G.A has also opposed the bail application of the applicant.

7. After hearing the rival contentions, this Court finds that only because of conduct of the co-accused, Dharendra Kumar, who is brother of the applicant, bail cannot be denied to the applicant. Even otherwise counsel for the informant admits that the trial of the co-accused, Dharendra, has already been separated. In the present case, the trial is expected to be concluded against the applicant keeping in view the earlier order passed by this Court.

8. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping in view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021; 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.

9. Let the applicant, Virendra Kumar Patel, involved in Case Crime No. 336 of 2022, under Sections- 323, 504, 506 and 304 IPC, Police Station- Phaphamau, District- Prayagraj, 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 not tamper with the evidence or threaten the witnesses.

(ii) The applicant will report his presence before the police station Phaphamau, District- Prayagraj in the first week of every second month.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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 shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(v) 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. is issued and the 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 of the Indian Penal Code.

(vi) 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 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. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted."

7. Further co-accused Jitendra Patel has also been granted bail by a co-ordinate Bench of this Court. The said order reads as under:-

"1. Heard Sri V.K. Baranwal, learned counsel for the applicant, Sri K.D. Tiwari, learned counsel for the informant and Dr. S.B. Maurya, learned AGA-I for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 336 of

2022, under Sections 323, 504, 506, 304 IPC, Police Station Phaphamau, District Prayagraj during pendency of the trial.

3. FIR of the present case was lodged against applicant and two others and according to the FIR applicant along with two others badly beaten the uncle of the informant and pushed him and due to the assault made by him, the uncle of the informant lost his consciousness and sustained serious injuries.

4. Learned counsel for the applicant submitted that FIR of the present case was lodged under Sections 323, 308, 504, 506 IPC but when injured died after about a month then case was converted under Section 304 IPC.

5. He further submits that from perusal of the post mortem report of the deceased, it appears that deceased sustained two healed abrasions and he died due to cardiac arrest. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 05.07.2023 and co-accused Virendra Kumar Patel has already been enlarged on bail by the co-ordinate Bench of this Court vide order dated 19.09.2023 passed in Criminal Misc. Bail Application No. 40508 of 2023 and case of applicant is at par with him.

6. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

8. Considering the fact that on the basis of general allegation, applicant has been made accused along with two others and even no weapon has been attributed to any accused persons including applicant and post mortem report suggests that deceased died due to cardiac arrest and co-accused Virendra Kumar Patel has already been enlarged on bail by the co-ordinate Bench of this Court, in my view, applicant is entitled to be released on bail.

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

10. Let the applicant - Jitendra Patel 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.

11. 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.

12. 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. The cause of death of the deceased is cardiac shock due to myocardial infarction with sepsis. The case of the applicant is of parity.

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

10. Let the applicant- **Dhirendra Kumar**, 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 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.

(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 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.

(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 him in accordance with law and the trial court may proceed against him 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.

11. 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.

12. The bail application is **allowed**.

Order Date :- 11.12.2023

AS Rathore

(Samit Gopal,J.)