

Neutral Citation No. - 2023:AHC-LKO:78633

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1622 of 2022

Applicant :- Jitesh Singh @ Jeetu @ Jitendra

Opposite Party :- State Of U.P Through Principal Secreary Home, Civil Secretriatic

Counsel for Applicant :- J.B. Singh,Ajeet Singh Verma

Counsel for Opposite Party :- G.A.,Sachin Chauhan,Salauddin Ayubi

Hon'ble Brij Raj Singh,J.

1. Heard Sri J.B. Singh, learned counsel for the applicant, Sri G. D. Bhatt, learned AGA for State assisted by Sri Bipul Kumar Singh, learned Brief Holder.
2. This is second bail application in case crime No.251/2020 under Section 302/120-B IPC, PS Hasanganj, Lucknow.
3. The first bail application Crl. Misc. Bail Application No.1332 of 2021 was rejected by this Court on 30.9.2021 which is quoted below:-

"1. Heard Sri Mohd. Amir Khan, learned counsel for the applicant and learned A.G.A. for the State.

2. The applicant is an accused in case crime No.251/2020, under Section 302 of IPC, police station - Hasanganj, District Lucknow.

3. It has been submitted by learned counsel for the applicant that on 24.8.2020. at around 9 a.m. three persons entered into the guest house for booking a room and they were consequently led to the person in-charge i.e. deceased. They were sitting and talking about the modalities when suddenly the complainant heard the gun shot and when he reached the said office of the deceased he saw that the deceased has been shot dead and the assailants had fled. It is further stated

that the deceased had a per-existing dispute and probability it is due to the said dispute the said occurrence has happened. Subsequently, during the investigation statement of the complainant was recorded where he has reiterated the contents of the first information report and further stated that three accused had met him and they were forwarded to the deceased to discuss about the modalities about booking room and subsequently after shooting the deceased they fled. The complainant tried to apprehend them but was unable to do so. In the scuffle one weapon and shirt of one of the accused fell off. The post mortem report also mentions injuries indicating an entry and exist wound caused due to firearm and it is also opined that death is caused due to anti mortem injuries. One Sudhir Pandey in his deposition has submitted that all the three accused were brought by him to the place of occurrence and after the said incident he had taken them and he has also identified the three accused. It has further come on record and also discussed in the rejection order that with regard to entire incident CCTV footage is also available.

4. It is also submitted by learned counsel for the applicant that the accused Ganga Ram has been enlarged on bail by this Court vide order dated 29.1.2021 passed in bail application No.10834 of 2020 and the role of the applicant being similar he has pressed that the present applicant is also entitled to be released on bail.

5. I have perused the said bail order of co-accused. In the bail order of Ganga Ram this Court has considered that the said accused was only assigned the role of criminal conspiracy under Section 120-B and no recovery has been shown against the said applicant. The said case of the Gaya Prasad is clearly distinguishable from the case of the present applicant. Here one weapon has been recovered from his pointing out and also that the applicant is accused under Sections 302 and 120-B IPC.

6. Learned A.G.A. has opposed the bail application but does not dispute aforesaid facts.

7. Considering the material available on record, especially, the CCTV footage, which has recorded the

entire incident, the place where the complainant has seen all the three accused entering into the guest house and subsequently after shooting the deceased in the scuffle a weapon and a shot have been recovered and the statement of ocular witness Sudhir Pandey, who had brought three accused to the place of incident and also all the three left with them, there is sufficient ocular evidence as well as circumstantial evidence on record and considering the role of the applicant, the gravity of the offence and the material available on record, I am not inclined to grant bail. The application is accordingly rejected. "

4. Learned counsel for the applicant has submitted that firearm injury indicates that there is single shot received by the deceased and the same has not been assigned to the applicant. He has submitted that the statement of PW-1 Shanti Das, PW-2 Ramendra Das, PW-3 Dheerendra Kumar Verma, PW-4 Shivam Verma have been examined before the Trial Court and this is second cause of action, therefore, he has filed this present second bail application.
5. Learned counsel for the applicant has submitted that PW-3 and 4 have not assigned role of firing to the applicant and they have also not identified the applicant during the trial in cross-examination, therefore, the applicant is entitled for bail. He has submitted that statement of PW-2 Ramendra Das is not reliable and the role assigned to the applicant by the PW-2 Ramendra Das is false and the applicant has not committed offence. He has submitted that medical report is not supporting the prosecution case. He has submitted that CCTV footage recorded, does not indicate that the applicant was present at the place of occurrence. He has submitted that co-accused Ganga Ram has been enlarged on bail on 29.1.2021 in Bail No.10834 of 2020 by this Court by a detailed order and the applicant is entitled for bail and he is having similar role. He has further submitted that the applicant is

in Jail since 30.3.2020. Learned counsel for the applicant has pressed no other ground.

6. On the other hand, learned AGA has opposed the bail and has submitted that entire material has been considered while rejecting the first bail application and issue of parity as well as the argument that CCTV footage has been considered and the prosecution case is corroborated by the statement of PW-2 Ramendra Das who has assigned role of firing to the applicant. It has been submitted by the learned AGA that post mortem report indicates that there are two firearm injuries:-

1. Fire arm wound of entry 1 cm x 0.5 cm x bone deep present on Rt side of face 2 cm above Rt angle of mouth margins inverted and irregular blackening burning singeing of hair present around wound.
2. Fire arm wound of exit 2 cm x 1 cm x bone deep present on it angle of mandible margins inverted and irregular on section cutting and probing both entry and exit wound communicating each other and gassing through and through.
3. Stitched wound 36 cm long along with stitches present on front of abdomen in mid line just below Xiphi stercum.

Learned AGA has further submitted that stitched wound of 36 cm long with stitches is present on front of abdomen in mid line below xiphi stercum. He has submitted that doctor has given statement under Section 161 CrPC that two firearm injuries are on the person of deceased and the deceased died due to anti-mortem injury as a result of shock and haemorrhage. Learned AGA has invited attention of this Court towards the statement of PW-2 Ramendra Das. In the cross-examination, PW-2 Ramendra Das has fully corroborated the prosecution case and he is the witness who was present on the spot. It has been deposed by him before the Court that on the date of incident, three accused

standing in the witness box, were present. He has identified the present accused in the witness box who shot fire. He has further submitted that all the three accused standing in the witness box had dragged the body of deceased Dheerendra Das.

7. Learned AGA has further submitted that PW-2 is eyewitness and he has deposed before the Trial Court and identified the accused who shot fire. He has submitted that there is no reason to disbelieve the version of PW-2 and prosecution case is established, therefore, the applicant is not entitled for bail.
8. Considering over all facts and circumstances of the case, the argument that PW-2 Ramendra Das who is ocular witness and has supported the prosecution case in cross-examination and has assigned role of firing to the applicant, the argument that deceased has received two firearm injuries: one on the face and second on the abdomen, the argument that there is no changed circumstances and the prosecution case is established, it is not a fit case for bail.
9. This second application for bail is accordingly rejected. The Trial Court is directed to conclude the trial within one year without being influenced by the observations made hereinabove.

Order Date :- 29.11.2023

Rajneesh JR-PS)