

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8632 of 2022

Applicant :- Raghvendra Awasthi Alias Yashu S/O Late Narendra Awasthi

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Arun Sinha, Nadeem Murtaza, Siddhartha Sinha, Sudhanshu S. Tripathi

Counsel for Opposite Party :- G.A., B.M. Sahai, Brij Mohan Sahai, Gulam Mustafa

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Arun Sinha assisted by Shri Nadeem Murtaza, learned counsel for the applicant, Shri B.M. Sahai assisted by Shri Gulam Mustafa, learned counsel for the informant/complainant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Raghvendra Awasthi Alias Yashu** for grant of bail, in Case Crime No.188 of 2020, under Sections 147, 148, 149, 302, 34, 120-B I.P.C. and Section 7 of the Criminal Law Amendment Act, Police Station Kotwali Gangaghat, District Unnao, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that the F.I.R. of the incident was lodged by one Rishabh Mani Tripathi against 10 named accused persons including the applicant on 19.06.2020 at Police Station Kotwali Gangaghat, District Unnao stating therein that the deceased (Shubham Mani Tripathi) was the brother of the informant, who was a journalist and his office was situated in the name of 'Mani Telecom' at Jhandawala Chauraha, Poni Road Shuklaganj, P.S. Kotwali Gangaghat, District Unnao and few days before the incident, the applicant and other co-accused persons had committed mischief at his office and had also fired gunshots pertaining to which an F.I.R. was lodged by the deceased and the accused persons of that case was pressuring and intimidating the deceased. It is also stated in the F.I.R. that on 19.06.2020 at about 03:30 p.m. the deceased Shubham Mani Tripathi had gone to Kutchery, Unnao and the accused persons had chased him in two vehicles. About 100 meters ahead of the

Sahjani Chauraha, named accused persons started indiscriminate firing on the deceased by which he died on the spot, however, one Mukhtar, who was accompanying the deceased, managed to escape. Postmortem of the deceased shows multiple firearm injuries on the person of the deceased and as per opinion of the doctor, the deceased had died due to hemorrhage and shock as a result of ante mortem injuries.

5. Highlighting the above factual matrix, it is vehemently submitted on behalf of the applicant that in the F.I.R., 10 persons have been named and the role of firing has been assigned to all of them while in the statement of star witness Mukhtar, who was accompanying the deceased on the motorcycle has stated that there were only two persons on motorcycle, who had fired gunshots on the deceased and when their motorcycle had fallen, another motorcycle, on which two persons were sitting, arrived and they also exhorted that he is alive and must not escape, however, he managed to escape, thus there is material contradiction in the story as stated in the F.I.R. and in the statement given by the star witness Mukhtar.

6. While drawing the attention of this Court towards the statement of the one Raj Kumar Gupta, it is vehemently submitted that this witness is claiming himself to be the eye witness of the incident and had only named four persons Sufiyan, Rizwan Kana, Mohd. Shanu @ Gandhi and Tipu Sultan @ Rashid as the persons who have committed assault on deceased. It is also submitted that after a long time, investigating officer has recorded statement of one Vijay Kumar @ Golu, who had stated that on 19.06.2020 when he had gone to Unnao and was standing near Kutchery, he saw the co-accused Divya Awasthi, Kanhaiya Awasthi who had arrived from their vehicle and other co-accused persons were also standing there and the accused Divya Awasthi has asked them to place all the persons at appropriate places in order to eliminate the deceased.

7. Highlighting the statement of Vijay Kumar @ Golu, it is vehemently submitted that even if the statement of the witness is taken on its face, the evidence of only hatching a conspiracy has been attributed to the applicant and beyond that there is no evidence of actively participating in the incident and statement of this witness has been recorded after 40 days. It is next submitted that there is no direct evidence of involvement of the applicant in the incident and there is no evidence or material pertaining to the part and parcel of any conspiracy.

8. It is further submitted that similarly placed co-accused persons of the alleged crime, namely, Santosh Bajpai, Abdul

Baari, Vikas Dixit, Swaroop Chand Sharma and Kapil Kataria have been released on bail by this Court as well as by the Coordinate Benches of this Court, vide orders dated 08.10.2021, 16.12.2021, 5.7.2022, 14.7.2022 and 18.7.2022 passed in Criminal Misc. Bail Application Nos.7198 of 2020, 7195 of 2021, 8687 of 2020, 298 of 2022 and 2251 of 2021, respectively. It is next submitted that the applicant is in jail in this case since 11.08.2020 and he is having criminal history of five cases, however, the same has been explained in para 29 of the bail application and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

9. Shri B.,M. Sahai and Shri Gulam Mustafa, learned counsels appearing for the informant/complainant submits that the applicant is part and parcel of a large gang, who is involved in property dealing and the deceased was a journalist, who was exposing the accused persons and the accused persons were annoyed by the activities of the deceased and they have earlier also made an attempt to murder him, but could not succeed and in this regard a criminal case was also lodged by the deceased against the applicant and another co-accused persons.

10. It is further submitted that the applicant is having a clear role in hatching a conspiracy and was part and parcel of the same as he had also provided location of the deceased to the co-accused Divya Awasthi where the deceased was present on the fateful day. It is also submitted that after the incident one of the prosecution witness was provided security, however, the co-accused persons Rizwan Kana and Gulfam had intimidated the witness while attending the case and security personnel provided to the witness had lodged an F.I.R. against the Rizwan Kana and Gulfam registered as Case Crime No.0436 of 2022, Police Station Kotwali, District Unnao.

11. It is further submitted that the applicant was earlier involved in an incident occurred with the deceased and in this connection an F.I.R. bearing case crime no. 374 of 2019 was lodged by deceased against the applicant and other accused persons.

12. It is further submitted that bail application of similarly placed co-accused persons of the alleged crime, namely, Afsar Ahmad, Sahnawaj Bihari, Kanhaiya Awasthi, Monu Khan @ Monu Lutera and Sufiyan have been rejected by the Coordinate Benches of this Court, vide orders dated 08.10.2021 passed in Criminal Misc. Bail Application Nos.10935 of 2020, 10584 of 2020, 11009 of 2020, 10902 of 2020, and order dated 23.9.2022 passed in Crl. Misc. Bail Application No. 3287 of 2022, respectively and Second Bail Application of Kanhaiya Awasthi

and Shahnawaz Anzar @ Shahnawaz Bihari were also rejected by a Coordinate Bench of this Court, vide order dated 2.12.2022 passed in Crl. Mis. Bail Application No.8774 of 2022 and Crl. Misc. Bail Application No. 7601 of 2022, respectively and therefore, having regard to the manner in which the crime has been committed, he is not entitled to be released on bail.

13. It is further submitted that the applicant before this Court was actively in touch with the other co-accused persons including shooters as it is evident from the call details record collected by the Investigating Officer.

14. Learned A.G.A. has also opposed the prayer of bail of the applicant on the ground that the applicant is part and parcel of the criminal conspiracy and had taken active part therein and therefore, he is not entitled to be released on bail.

15. Having heard learned counsel for the parties and having perused the record, it is evident that the F.I.R. of the incident has been lodged by the brother of the deceased and the role of firing has been assigned to all the persons named therein. The star witness of this incident namely Mukhtar, who was accompanying the deceased on a motorcycle at the time of incident, had stated in his statement recorded under Section 161 Cr.P.C. that when he along with the deceased was intending to go to Shuklaganj and arrived at Sahjani Chauraha at that time two persons riding motorcycle came and fired gunshots towards the deceased. The motorcycle in the process had fallen down, but the deceased was not able to run and at that time another motorcycle came whereon two persons were sitting and they also fired gunshots, however, he managed to escape.

16. Perusal of the case diary would also reveal that at first, accused Sahnawaj Bihari was arrested and confessed his guilt to the tune that the deceased was causing hurdles in the business of property dealing of Divya Awasthi and also posting inflammatory post on social media against her and due to this Divya Awasthi through his friend Monu Khan had given contract of killing the deceased to the Rizwan Kana for Rs.4 lakh and Rs.20,000/- has been given as advance and Rizwan Kana had come with his associates Shanu @ Gandhi and Abdul Baari and had shown the deceased to the shooter Rizwan Kana. On 19.06.2020, Abdul Baari, who was doing 'reiki' near the house of the deceased informed Monu Khan that the deceased is going to Kutchery, Unnao and Monu Khan also went to the Kutchery, Unnao and Divya Awasthi also went there and instructed that the work should be accomplished today. Monu Khan informed that he will give location of the deceased when he will leave the Kutchery, Unnao and Monu Khan had gone

together on the motorcycle for the purpose of providing location of the deceased and on second motorcycle, Sufiyan and Rizwan Kana had gone and on the third motorcycle, Shanu @ Gandhi had gone with Tipu Sultan and when the deceased was returning from Kutchery Unnao, Monu Khan informed Sufiyan and Rizwan Kana and Shanu @ Gandhi and other shooters followed the deceased and fired gunshots at the deceased.

17. Thereafter Divya Awasthi, Kanhaiya Awasthi, Shanu @ Gandhi and Tipu Sultan were arrested and weapon used in assault was also recovered. Co-accused Sufiyan in his confessional statement has taken the name of the applicant in the context that Rizwan Kana had deputed Sahnawan Bihari, Kaushal Kishor @ Apradhi Baba, Ranu Sharma, Kapil Katariya, Atul Dubey, Shanu @ Gandhi, Tipu Sultan and Abdul Baari and the applicant for this work, however, it was Abdul Baari, who informed Monu Khan about the movement of the deceased and Monu Khan in return had informed co-accused Sufiyan and thereafter the incident had happened as narrated by the co-accused Sahnawaj. It is also coming in the confession of the co-accused persons specially in the confession of Monu Khan that conspiracy to kill the deceased was hatched by the one Divya Awasthi and Afsar Ahmad informed that he is having persons, who could accomplish this job and Monu Khan was asked by her to proceed and on 10.06.2020 Afsar Ahmad had come to Monu Khan while the applicant-Raghvendra Awasthi @ Yashu was also there along with Afsar. Rizwan Kana and Shanu @ Gandhi had also come with Afsar and there the contract of killing the deceased for Rs.4 lakh has been given and they have stated to have deputed many persons for doing 'reiki' of the deceased.

18. The investigating officer has also collected call details record of Monu Khan, Sufiyan, applicant- Raghvendra Awasthi @ Yashu and Afsar and it is revealed that shooters Monu Khan and Sufiyan were talking with them and also to each other. The statement of two witnesses namely Raj Kumar Gupta and Mohit Shukla was also recorded by the investigating officer, who have stated that during the course of incident applicant - Raghvendra Awasthi @ Yashu had come along with many persons in a four wheeler and applicant- Raghvendra Awasthi @ Yashu and Apradhi Baba had shouted that no one should escape and they had only identified Raghvendra Awasthi @ Yashu and Apradhi Baba. A witness namely Vijay Kumar @ Golu has also given his statement, wherein he had stated that on 19.06.2020 in the afternoon Divya Awasthi and Kanhaiya Awasthi had come with applicant -Raghvendra Awasthi @ Yashu along with other accused persons including Vikas Dixit and applicant - Raghvendra Awasthi @ Yashu and then Monu Khan had

informed Divya Awasthi that the deceased had come to Kutchery Unnao on which Divya Awasthi had said that the deceased should not escape.

19. Thus, the evidence collected by the Investigating Officer mentioned herein before would clearly demonstrate that the applicant is not only related to the main accused persons Divya Awasthi and Kanhaiya Awasthi but was actively involved in the conspiracy hatched to eliminate the deceased, the role of co-accused persons, whose bail applications have been granted by this Court as well as by the Coordinate Benches were having a different role in the crime. There are many co-accused persons whose role are similar to the instant applicant and their bail applications have been rejected by the Coordinate Benches and there are some accused persons, namely, Kanhaiya Awasthi and Shahnawaz Anzar @ Shahnawaz Bihari, whose second bail application have also been rejected. There cannot be parity with regard to the bail rejection is concerned but having regard to all the facts and circumstances and the allegations which have been levelled against the applicant with regard to the active role played by applicant in hatching a conspiracy, mentioned herein before, I do not find any good ground on the basis of which the facility of bail may be extended to the instant applicant. The applicant is also having criminal history of many cases including one lodged by the deceased.

20. Having regard to all the facts and circumstances of this case as well as the reasons mentioned herein above, I do not find any good ground to release the applicant on bail. Thus, the bail application moved by appellant- **Raghvendra Awasthi Alias Yashu** is hereby **rejected**.

21. At this stage, it is informed that a Coordinate Bench of this Court vide order dated 02.12.2022 passed in Bail Application No. 8774 of 2022 with regard to the plea of bail of co-accused Kanhaiya Awasthi had directed the trial court to conclude the trial within a period of one year from the date of order i.e. 02.12.2022. Almost nine months appears to have elapsed and all the witnesses of fact are reported to have been testified before the trial court.

22. The trial court is therefore directed to conclude the trial strictly within the time frame as directed by the Coordinate Bench in the bail order pertaining to co-accused Kanhaiya Awasthi i.e. till 02.12.2023 failing which the applicant may renew his prayer for bail before this Court.

Order Date :- 10.10.2023/Muk