

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9558 of 2023

Applicant :- Vinay Soni

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

Counsel for Applicant :- Rajendra Prasad Mishra, Amaresh Kumar

Counsel for Opposite Party :- G.A., Ram Naresh Singh Chauhan

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Rajendra Prasad Mishra, learned counsel for the accused-applicant, Shri Ram Naresh Singh Chauhan, learned counsel appearing for the complainant/informant well as learned A.G.A. for the State and perused the record.

2. This second bail application has been moved by the accused/applicant- **Vinay Soni** for grant of bail, in Case Crime No. 228 of 2021, under Section 302 and 201 I.P.C., Police Station Ganga Ghat, District Unnao, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that this is the second bail application of the applicant, as his first bail application has been rejected by this Court, vide order dated 23.08.2022 passed in Criminal Misc. Bail Application No. 12860 of 2021. However, since the rejection of the first bail application of the applicant, there has been material change in the circumstances as statements of many prosecution witnesses have been recorded before the trial Court.

4. It is further submitted that the case of the prosecution is based on circumstantial evidence and the motive, which has been assigned to the applicant, is weak and highly improbable and could not be believed.

5. It is further submitted that against applicant apart from the statement of one Raju Pathan, the evidence of recovery of a 'country-made pistol' and an 'empty cartridge' has been arrayed. However, the testimony of witness Raju Pathan has been recorded before the trial Court, which is not of truthful in nature and the recovery of a 'pistol' along with 'empty cartridge' could not be believed in absence of any independent public witnesses.

6. It is vehemently submitted that the circumstances which have been alleged against the applicant are of very weak nature and no inference may be drawn that the offence has been committed by the applicant. Applicant is languishing in jail in this case since 18.06.2021 and he is not having any previous criminal history and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

7. Learned A.G.A. on the other hand submits that the first bail application of the applicant has been rejected on merits and there is no change in the circumstances since then and, therefore, he is not entitled to be released on bail.

8. Shri Ram Naresh Singh Chauhan, learned counsel appearing for the complainant/informant while referring to the statement of the informant as well as other prosecution witnesses including those whose statements have been recorded before the trial Court, submits that the circumstances which are being alleged against the applicant are of conclusive nature and since the applicant has been identified by an independent witness Raju Pathan as the person who had made a phone call to the deceased and called him, the only inference which could be drawn that it was applicant who had committed the murder of the deceased and apart from that, the weapon of assault has also been recovered on the pointing of the applicant.

9. It is also submitted that about 05 prosecution witnesses have been fully testified before the trial Court and the trial is at the concluding stage and, thus, the applicant is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the first bail application of the applicant has been rejected by passing a detailed order on 23.08.2022. The observations made in the order dated 23.08.2022 on the basis of which the plea of bail of the applicant was rejected are being produced in verbatim herein-below:-

"Having heard learned counsel for the parties and having perused the record, it is evident that In the F.I.R. as well as in the statement of informant it is stated that on 14.06.2021 at 9:00 pm. the deceased had gone out on Motorcycle No.UP 35AA6167 to meet the applicant, but did not return till late in the night. Informant searched him everywhere but his both mobile phones were coming switched off. He informed the police. In the next morning a friend of the deceased informed that deceased had received a phone call from mobile phone no.

7755827317 and about at 9:01 pm. the deceased informed him that it was applicant's call. Friend of deceased had also sent to the informant a screenshot of whatsapp chat. When informant made a call on the above phone number one Raju Pathan picked up the phone and informed that last night at Pony Road Tiraha a person took his phone to make a call as he was not having balance in his phone and when Raju Pathan was shown picture of applicant, he identified applicant as the person who had made the call. The motive of crime is stated to be that applicant's wife was having illicit relations with the relative of deceased namely Shanu. Two firearm entry wounds have been found at the chest of deceased. Raju Pathan an E-rickshaw driver in his statement has identified applicant as the person who had made the phone call on 14.06.2021 at 08.30 pm to deceased from pony road Tiraha. Applicant was arrested and confessed his guilt to the tune that he was having suspicion that one Shanu, relative of deceased is having illicit relations with his wife and Prateek (deceased) use to take applicant's location at Delhi and informs Shanu, who uses the same to meet his wife. Thus, he hatched a conspiracy with his friend Ashok Kumar and went to Kanpur with his maternal uncle Kapil Soni on the pretext of purchasing jewellery and reached Kanpur with his friend Ashok Kumar and made a call to deceased from the phone of an E-rickshaw driver Raju Pathan and the deceased arrived on his call on a motorcycle bearing no. UP 35AA6167. The applicant had taken the deceased while leaving the motorcycle of the deceased at Shuklaganj and proceeded towards the road of Pariyar and allegedly fired two shots on the deceased, while co-accused Ashok Kumar caught hold of the deceased and thereafter the applicant had thrown the 'tamancha' and mobile phone of the deceased in shrubs.

Applicant was taken on police custody remand and on the pointing of the applicant, one country made pistol with an empty cartridge was recovered. The investigating officer on 02.09.2022 has recorded the statements of two witnesses namely Surjeet Singh Verma and Beenu Singh, who have claimed to have seen applicant, deceased and co-accused Ashok Kumar together on 14.06.2021 at 8:30/8:45 pm. near 'Durga Mandir'.

The investigating officer has also procured a CCTV footage of a jewellery shop at Kanpur wherein the applicant and Kapil Soni are seen together.

Applicant was also not found on his duty on 13th, 14th and 21st June, 2021 and had came on duty only at 13:30 hours on 15th June, 2021.

One Aditya Kumar, a friend of deceased Prateek fortifies that deceased had received a phone call from an unknown number on 14.06.2021 at 8:41 pm. but subsequently informed him that the call was made by the instant applicant Vinay Soni and the deceased had also sent the screenshot of the same to the witness Aditya Singh, who in turn had provided that screenshot to Prabhat Singh and was found to be of Raju Pathan.

The motorcycle of the deceased was also recovered on the pointing of co-accused Ashok Kumar from near the Railway Station Gangaghat, Unnao. Witness Kapil Soni (relative of the applicant), has also stated in his statement to have gone to Kanpur with applicant on 14.06.2021.

Location of the applicant's mobile phone was also found on 14.06.2021 at Unnao and Kasba Achalganj, Kanpur.

Having regard to all the circumstances placed above, I do not find any good ground to release the applicant on bail. Thus, the bail application moved on behalf of the applicant, Vinay Soni is, hereby, rejected."

It is also evident that while rejecting the plea of bail of the applicant this Court had directed the trial Court to conclude the trial within one year from production of a copy of that order before it.

11. This Court had directed the trial Court to submit a report with regard to the progress of the case by passing an order dated 18.09.2023 and the trial Court vide its communication dated 29.09.2023 has reported that 04 prosecution witnesses have been fully testified while the recording of the prosecution witness no.5 is under progress and during the course of deliberations learned counsel for the complainant/informant also informed that the testimony of P.W.-5 has also completed. The trial Court in its communication has also informed that only four prosecution witnesses are remained to be testified and in the intervening period (since 29.09.2023 till now), it is expected that some more prosecution witnesses might have been recorded before the trial Court. Thus, the trial is at the concluding stage.

12. Having perused the statements of the prosecution witnesses whose testimony have been placed on record, I do not find any change in the circumstances since the rejection of the first bail application of the applicant. In result, this second bail application moved on behalf of the applicant- **Vinay Soni** is also **rejected**.

13. However, the rejection of this bail application of the applicant may not provide any exoneration to the prosecution from its duty to produce all the prosecution witnesses on each and every date of listing of the case before the trial Court.

14. Thus, it is directed that the trial Court shall now fix/list this case before it at least once in a week and on all such dates would ensure the presence of the prosecution witnesses.

15. The Superintendent of Police, Unnao would be personally responsible to produce the witnesses before the trial Court on each and every date of such listing.

16. The office is directed to immediately transmit a copy of this order to the trial Court through the Sessions Judge concerned as well as to the S.P./S.S.P. Unnao for strict compliance.

17. It is further provided that if the trial is not concluded within next six months, the applicant would be entitled to renew his prayer of bail again before this Court.

18. Case diary of the case be immediately returned to learned A.G.A.

19. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 29.11.2023

Praveen