

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10818 of 2023

Applicant :- Akash Upadhyay

Opposite Party :- State Of U.P., Thru. The Prin. Secy. Home Deptt., Civil Sectt. Lko.

Counsel for Applicant :- Divya Tripathi, Divyanshu Singh, Prashant Chaudhary

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Ms. Suniti Sachan, learned counsel for the accused-applicant as 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 - **Akash Upadhyay** for grant of bail, in Case Crime No.697 of 2022, under Sections 304, 109 I.P.C., Police Station Kotwali Nagar, District Barabanki, during trial as his first bail application has been rejected vide order dated 30.11.2022 passed in Criminal Misc. Bail Application No.13917 of 2022 by a Coordinate Bench of this Court. The Hon'ble Judge, who has rejected first bail application of the applicant, has now been transferred to some other high court.

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 applicant is not connected with the crime in any way. There is no evidence or material collected by the investigating officer, which may even remotely connect the applicant with the alleged offence. The only evidence against the applicant is the confessional statement of three co-accused persons namely Anil Singh @ Polard, Mohammad Arif and Sanjay Pal @ Monu, who appear to have confessed that the deceased and one Avinash Kumar Rai used to purchased drugs (smack) from them and on the relevant day, smack was purchased by the deceased and co-accused Avinash Kumar Rai and after consuming which the deceased had died.

5. It is also submitted that admittedly the applicant has not sold any drug/smack to the deceased or co-accused Avinash Kumar

Rai and the same was sold by co-accused persons namely Anil Singh @ Polard, Mohammad Arif and Sanjay Pal @ Monu and it is alleged that co-accused persons on their arrest has confessed that they and the applicant as well as Nazmuddin are indulged in the trade of selling narcotics to the students around the Babu Banarasi Das University knowing well that consummation of the drug is harmful and may have caused death and it was the drug, which was sold by the co-accused persons namely Anil Singh @ Polard, Mohammad Arif and Sanjay Pal @ Monu, deceased Shivam Shukla had died. Thus there is no direct evidence pertaining to the involvement of the applicant in any trade of narcotics.

6. It is further submitted that similarly placed co-accused persons of the alleged crime, namely, Anil Singh @ Polard, Mohammad Arif, Sanjay Pal @ Monu and Nazmuddin have been released on bail by the Coordinate Benches of this Court as well as by this Court, vide orders dated 01.08.2023, 22.08.2023, 06.07.2023 and 03.02.2023 passed in Criminal Misc. Bail Application Nos.11243 of 2022, 10603 of 2022, 5311 of 2023 and 240 of 2023, respectively.

7. It is further submitted that at the time of arrest of the applicant in the instant case recovery of some smack has been shown, however, in that case also, the applicant has been granted bail by a Coordinate Bench of this Court vide order dated 23.02.2023 passed in Criminal Misc. Bail Application No.2739 of 2023 and apart from that case, the applicant is not involved in any other criminal case.

8. It is next submitted that applicant is in jail in this case since 11.08.2022 and trial has yet not started and is not expected to conclude in near future. Charge-sheet in this case has already been submitted 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. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that first bail application of the applicant has been rejected by a Coordinate Bench of this Court and there is no change in the circumstances since rejection of first bail application of the applicant moreover the applicant is indulged in the trade of narcotics and smack/drug procured applicant has been sold by co-accused persons namely Anil Singh @ Polard, Mohammad Arif and Sanjay Pal @ Monu to the deceased and Avinash Kumar Rai and after consummation of which the deceased had died and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other

factual submissions made by learned counsel for the applicant.

10. Having heard learned counsel for the parties and having perused the record, it is evident that F.I.R. of this case has been lodged by Narvedeshwar Shukla on 15.07.2022 at Police Station Kotwali Nagar, District Barabanki alleging therein that his son namely Shivam Shukla was studying in Meyo Institute of Medical Science, Safedabad, Barabanki and on 14.07.2022 despite many phone calls made on his mobile phone, he did not pick up the phone call on which a call was made to one Saurabh Shukla, who was residing nearby, who informed that the deceased is with co-accused Avinash Kumar Rai and after arrival of co-accused Avinash Kumar Rai, when the room of the deceased was opened, he was found in an unconscious state and blood was oozing from his nostril. He was immediately taken to the hospital, however, he did not survive. The postmortem report of the deceased would reveal that cause of death could not be ascertained, however, the Doctor, who had conducted the postmortem, have opined that about 100 milliliter of thick black colour liquid was found in the abdomen of the deceased and his mucosa was congested which denotes that he might have died with overdose of the drug.

11. It is also reflected that at first co-accused Avinash Kumar Rai was arrested and confessed that he as well as deceased had purchased smack from Anil Singh @ Polard, Mohammad Arif and Sanjay Pal @ Monu. Thereafter three co-accused persons from whom the smack is shown to have been purchased by co-accused Avinash Kumar Rai and deceased Shivam Shukla were arrested and it is in their confessional statement, name of the instant applicant has surfaced to the tune that the applicant and one Nazimuddin are also involved in the trade of narcotics and the drug is purchased from Nazimuddin through applicant. In this regard apart from one witness Sunni Gautam, there are confessional statement of co-accused persons against the applicant. Admittedly the applicant has not sold any drug to the deceased or co-accused Avinash Kumar Rai and his role is limited to the extent that he was involved in the trade of narcotics, which was being purchased by three co-accused persons namely Anil Singh @ Polard, Mohammad Arif and Sanjay Pal @ Monu through the applicant from co-accused Nazimuddin. All these co-accused persons have been granted bail by Coordinate Benches of this Court as well as by this Court. The bail of accused Sanjay Pal @ Monu was earlier rejected, however, his second bail application has been allowed on 06.07.2023. Nothing has been brought in the knowledge of this Court, which may suggest that the bail orders, whereby the co-accused persons have been granted bail, have been challenged at any higher forum or has been cancelled by the

same Bench. Criminal history of one case has been adequately explained and admittedly he was not involved in selling drug to the deceased or co-accused Avinash Kumar Rai. Thus period of detention since rejection of first bail application of the applicant as well as the reasons, which have been highlighted herein-before as well as the fact that the second bail application of co-accused person Sanjay Pal @ Monu, whose first bail application was earlier rejected, has been allowed by the same Bench subsequently, in the considered opinion of this Court, there is material change in circumstances since rejection of first bail application of the applicant. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 11.08.2022. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. Having regard to the overall facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail second application is thus **allowed**.

13. Let the accused/applicant- **Akash Upadhyay** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

14. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

15. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

16. 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 of this Court on the merits of the

case.

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

Order Date :- 27.10.2023

Anupam S/-