

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11535 of 2023

Applicant :- Sachin Kumar Soni Alias Pawan

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Home, Lucknow

Counsel for Applicant :- J.B. Singh

Counsel for Opposite Party :- G.A., Ashish Kumar Maurya, Vikas Vikram Singh

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri J.B. Singh, learned counsel for the accused/applicant, Shri Vikas Vikram Singh, learned counsel appearing for the complainant/informant 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- **Sachin Kumar Soni Alias Pawan** for grant of bail, in Case Crime No. 366 of 2019, under Sections 147, 148, 149, 323, 302, 201, 120-B and 216 I.P.C., Police Station Harchandpur, District Raebareli, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
4. It is further submitted that in the First Information Report, the applicant was not named and the allegations were only against the owner of the 'Dhaba', namely, Suresh Yadav and the staff of 'Dhaba'.
5. It is further submitted that many days after the incident, a witness namely, Raj Kumar Singh claimed himself to be the eyewitness of the incident but he has identified only co-accused Suresh Yadav, Arkit and Ramesh along with other 10-12 unknown persons and thus, he could also not identify the applicant.
6. It is further submitted that the statement of this witness may not be believed in the background that this witness was also a witness of panchnama and he had not stated anything pertaining to the identification of the assailants at that time.

7. It is also submitted that the name of the applicant and other co-accused persons was surfaced in the confessional statement of the co-accused, Ram Krishna Yadav @ R. K. Yadav wherein also the role of only accompanying the main assailants in his Scorpio vehicle has been assigned to the instant applicant while hitting the Bulltet motorcycle of the deceased with his Scorpio vehicle has been assigned to R.K. Yadav.

8. It is further submitted that apart from the confessional statement of the applicant and other co-accused persons, there is no evidence which may connect the applicant and other co-accused persons with the crime. The recovery of the weapon of assault has been made from the co-accused persons, namely, Luvkush and Gaya Bux Singh @ Deepu Singh.

9. It is also submitted that nothing incriminating has been recovered either form the possession or on the pointing out of the applicant and no specific role of any kind has been assigned to the instant applicant.

10. It is further submitted that identically placed co-accused persons namely, Ram Pratap Yadav @ R.P. Yadav, Atul Tiwari, Abhitaj Singh @ Abhitej Pratap Singh, Harshit Verma, Jhurha @ Jai Chandra @ Jitendra, Ram Sumer @ Sumer, Lavkush and Gaya Bux Singh @ Deepu Singh and Manu Kumar Bari have been granted bail by coordinate Benches of this Court, vide orders dated 3.8.2021, 28.1.2022, 28.1.2022, 28.1.2022, 4.7.2023, 4.7.2023, 4.7.2023, 12.12.2022 and 21.07.2023 passed in Crl. Misc. Bail Application Nos. 8151 of 2021, 2449 of 2020, 3675 of 2020, 3367 of 2020, 5995 of 2023, 5920 of 2023, 1038 of 2023, 12069 of 2022 and 4314 of 2023, respectively.

11. It is further submitted that the applicant is in jail in this case since 14.10.2019 and till now, only two prosecution witnesses have been fully examined while the examination of the third prosecution witness is going on before the trial court. Having regard to the pace with which the trial is moving in the trial court, despite the order of this Court for expeditious disposal, it is not expected that the same may conclude in the near future.

12. It is further submitted that the criminal history of two cases has been adequately explained in Para No. 3 of the rejoinder affidavit dated 05.10.2023 and both these cases have been slapped against the applicant when he was detained in prison in the instant case. The applicant undertakes that he will cooperate in the trial and would not seek unnecessary adjournments when the prosecution witness would be in attendance. There is no apprehension that the accused-applicant after release on bail,

may flee from the process of law or may otherwise misuse the liberty.

13. Learned A.G.A., on the other hand submits that having regard to the manner in which the offence has been committed the applicant is not entitled for bail.

14. Shri Vikas Vikram Singh, learned counsel appearing for the complainant/informant vehemently submits that the applicant may not claim the bail on the basis of parity. While referring to the order of the Hon'ble Supreme Court passed in S.L.P. (Criminal) No. 28077 of 2021 of date 10.12.2021, it is submitted that Hon'ble Apex Court while not interfering in the bail order of the co-accused Ram Pratap Yadav @ R.P. Yadav, observed that the case of the other co-accused persons would be examined on their own facts and merits and without being influenced by that order.

15. It is also submitted that bail order of co-accused Surendra Singh dated 28.02.2023 passed in Criminal Misc. Bail Application No. 3068 of 2023 by a co-ordinate Bench has been challenged before Apex Court by filing S.L.P. and notice has also been issued therein.

16. It is also submitted that the conduct of the instant applicant would also render him not entitled for bail as after committing the incident of the instant case he has intimidated the complainant in the court premises on the date when the charge against the applicant was framed and the other co-accused persons had also opened fire on the house of one of the prosecution witness namely, Raj Kumari Singh, pertaining to which another First Information Report U/s 307 IPC and other penal offences was lodged against them and thus it is on the cards that if the facility of bail is extended to the instant applicant, the fair trial would not be possible.

17. The prosecution case as is evident from the investigation conducted by the Investigating Officer is to the tune that Manish, Saurabh, Ajay and Agnay Pratap Singh had gone to the '*Somu ka dhaba*' for taking dinner which was owned by the named co-accused, Suresh Yadav along with deceased Aditya Pratap Singh and an altercation had taken place between them and the staff of the dhaba and deceased was assaulted by the owner and staff of the dhaba and when the deceased had remained alone, he was chased by the staff of the dhaba including the instant applicant in two vehicles (Scorpio and Safari) and they assaulted the deceased at a lonely place. The incident is claimed to have been seen by the witness Raj Kumar Singh who is the star witness of this crime. In his statement, he

has claimed to have seen many persons assaulting the deceased and have identified accused Ramesh Yadav, Suresh Yadav and Arkit Yadav from amongst 10-12 persons, as the persons assaulting the deceased. On the next day, the dead body of the deceased was found from that very place. Witness Raj Kumar Singh has also been testified before the trial court as P.W.-12 and he has categorically supported his statement as recorded under Section 161 Cr.P.C. and have stated to have identified Suresh Yadav, Arkit Yadav and Ramesh Yadav from amongst the accused persons, who were assaulting the deceased at the relevant point of time.

18. Having heard learned counsel for the parties and having perused the record, it is evident that the applicant was working at the '*somu ka dhaba*' at the relevant time. In the FIR, the applicant was not named and only the owner and the staff of the Dhaba was mentioned therein. General role of assault has been assigned to the applicant and other co-accused persons and no overt act or specific role has been assigned to the applicant. The witnesses namely, Saurabh Singh, Ravinder Pratap Singh @ Manish Singh and Ajay Singh, who were present at the Dhaba with the deceased have also not taken the name of the applicant as the assailant and has also not identified him. The recovery of one 'danda' and one PVC pipe has also been effected from the co-accused persons and thus, no recovery of any incriminating article has been effected either on the pointing or from possession of the applicant. Identically placed co-accused persons namely, Ram Pratap Yadav @ R.P. Yadav, Atul Tiwari, Abhitaj Singh @ Abhitej Pratap Singh, Harshit Verma, Jhurha @ Jai Chandra @ Jitendra, Ram Sumer @ Sumer, Lavkush and Gaya Bux Singh @ Deepu Singh and Manu Kumar Bari have been granted bail by this Court and coordinate Benches of this Court on merits without being influenced by the bail order of the co-accused, Ram Pratap Yadav @ R.P. Yadav. The role of the applicant in the alleged crime is distinguishable from the role of co-accused persons Ramesh Yadav, Suresh Yadav and Arkit, who have been identified by witness Raj Kumar Singh and also from co-accused Ram Krishan Yadav, who has confessed to have hit the deceased with his vehicle, which he was driving and rejection of bail applications of these co-accused persons would not have any adverse affect on the fate of the plea of bail of the applicant. The criminal history of two cases shown against the applicant have been adequately explained. He was not named in the F.I.R. pertaining to section 307 I.P.C., which has been lodged against other persons and some of them have also been granted bail. So far as the apprehension of the informant/complainant with regard to the fair trial is concerned, the same may be taken care of by placing

adequate conditions/restrictions on the applicant. The applicant is in jail in this case since 14.10.2019. Only two prosecution witnesses have been fully examined before the trial court so far and the third prosecution witness is under examination. It is evident that the trial, despite a specific order of this Court, is not going to conclude in near future. Thus, for the reasons aforesaid, the facility of bail, in the considered opinion of this Court, may be extended to the instant applicant on merits as well as on the principle of parity.

19. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

20. Let the accused/applicant- **Sachin Kumar Soni Alias Pawan** involved in the aforesaid case be released on bail on 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 within 3 days after his release from prison shall file an undertaking before the trial court stating clearly that he shall remain present before the trial court on each and every date wherein his presence would be required.

(ii) The applicant shall not move any adjournment application on whatsoever ground especially when the prosecution witness would be in attendance and would instruct his counsel to do all which is required for expeditious disposal of the case.

(iii) The applicant shall not attempt to contact any of the prosecution witnesses including those already examined either directly, indirectly or through any social platform and violation of this condition alone shall be a ground for cancellation of bail granted by this Court.

(iv) The trial court shall make all endeavours to conclude the trial at the earliest keeping in view the provisions contained U/s 309 of the Cr.P.C. without granting adjournments to either parties.

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

(vi) The applicant shall cooperate in the trial sincerely without

seeking any adjournment.

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

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

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

23. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 10.10.2023

Praveen