

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2005 of 2024

Applicant :- Pappu @ Krishna Pal Yadav

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

Counsel for Applicant :- Suresh Kumar Yadav, Amrendra Nath Tripathi

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

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Amrendra Nath Tripathi, learned counsel for the accused-applicant, learned A.G.A. for the State as well as Shri Ram Prakash Singh, learned counsel for the informant/complainant and perused the record.

2. This bail application has been moved by the accused/applicant- **Pappu @ Krishna Pal Yadav** for grant of bail, in Case Crime No. 0134 of 2022, under Section 302 I.P.C., Police Station- Mohammadpur Khala, District- Barabanki, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The informant of the instant case is having enmity with the applicant on the basis of local politics and also with regard to the measurements of an agriculture plot and the name of the applicant has surfaced in the F.I.R. only on account of this enmity on the basis of apprehension and suspicion alone.

4. It is further submitted that it is a case of blind murder and after many days of the incident, statement of one Prem Kumar is shown to have been recorded, who claimed himself to be an eye witness of the alleged crime and he stated that he had seen the applicant and co-accused Tillu @ Devendra Pal Yadav assaulting the deceased while co-accused Amresh Yadav and Dileep Yadav were catching hold of the deceased.

5. It is vehemently submitted that statement of this witness i.e. Prem Kumar could not be believed as the same is not reliable as he has been planted afterwards and he did not say anything pertaining to the incident committed by the applicant and co-accused co-accused Tillu @ Devendra Pal Yadav, when his opinion was asked by the maker of Inquest Report, as he was a

panch witness and after drawing of the inquest, he absconded and could not be found by the Investigating Officer for the purpose of recording his statement.

6. It is further submitted that during the course of investigation, various witnesses have filed their affidavits and they have also not alleged any imputation against the applicant and when the investigation was going on at Police Station- Mohammadpur Khala, Barabanki, this star witness of the alleged crime, namely, Prem Kumar and his other associates were the prime suspects and at that time, they were also not available at their houses and were hiding themselves and it is only after the transfer of the investigation to Crime Branch Ayodhya/ Faizabad and recording of additional statement of witness Prem Kumar, charge sheet has been filed without there being any sufficient material or evidence.

7. It is further submitted that in support of the allegations, there is statements of witness Prem Kumar, who claimed to have seen the incident and two other witnesses, namely, Ram Sawle and Mangal Yadav, who claimed to have witnessed the applicant and co-accused Tillu @ Devendra Pal Yadav, Dileep Yadav and Amresh Yadav going after the deceased while saying that they have got an opportunity to eliminate him.

8. It is vehemently submitted that it is strange that these witnesses, who are also related to the deceased and informant, would keep mum and will not disclose the incident to the informant or to any other person.

9. It is also submitted that co-accused person, namely, Amresh Yadav and Dileep Yadav, to whom the role of catching hold of deceased was assigned, has been released on bail by a Coordinate Bench of this Court vide order dated 12.04.2023 passed in Criminal Misc. Bail Applications No.2901 of 2023 and 2718 of 2023 while the bail application of applicant Pappu @ Krishnapal Yadav has been rejected vide order dated 06.11.2023 passed in Criminal Misc. Bail Application No. 5390 of 2023, however, after the rejection of first bail application of the applicant, co-accused Tillu @ Devendra Pal Yadav, to whom also the role of assaulting the deceased was attributed, has been granted bail by this Court vide order dated 19.3.2024 passed in Criminal Misc. Bail Application No. 5847 of 2023.

10. It is vehemently submitted that the circumstances are changed since the rejection of the first bail application of applicant as the P.W.1- Ram Vijay/ informant has been cross examined fully and during his cross examination, he has admitted that he had not seen the incident with his eyes and in

his examination in chief, the name of the applicant and co-accused persons have emerged as he was instructed by his counsel to take their names and also admitted that after the incident, the witness Prem Kumar had absconded from the village and also the statement of P.W.2, Prem Kumar has been recorded before the Trial Court and statement of another witness, namely, Ram Sawle has been recorded as PW-3, who has not supported the version of the prosecution.

11. While drawing attention of this Court towards the statement of the witness Prem Kumar recorded before the trial court as PW-2, it is vehemently submitted that this witness had arrived on the scene of the crime on an alarm raised by the deceased and stated to have seen the applicant and co-accused Tillu @ Devendra Pal Yadav assaulting the deceased and also that while he was attempting to run away from there, he fell down and was caught by the co-accused Tillu @ Devendra Pal Yadav and Dileep and they also attempted to strangle him and thereafter, he was left by them on the promise that he will not disclose about the incident to any other person. However, on 08.04.2022, he has told about the incident to his uncle Ram Vijay. It is vehemently submitted that this witness is having political enmity with the applicant and co-accused Tillu @ Devendra Pal Yadav as he has admitted in his cross examination and also he has admitted that he was also hiding after the death of the deceased Sant Ram. While highlighting one of the portions of his evidence where this witness has admitted that the deceased has given all his property to one Ram Vijay and not to him, it is stated that this witness, who had deposed against the applicant and other accused persons, was himself a prime suspect of commission of murder of the deceased Sant Ram and therefore, his testimony could not be believed.

12. While drawing attention of this Court towards the statement of PW-1 Ram Vijay, it is submitted that he has stated in his evidence before the trial court that it was he (Ram Vijay, informant) who had told the witness Prem Kumar that he had written the name of the applicant and other accused persons namely, Tillu @ Devendra Pal, Amresh and Dileep Yadav and it is only thereafter the witness Prem Kumar could know about the names of the accused persons. Thus, it is highlighted that the statement of the witness Prem Kumar could not be believed that he was the eye-witness of the incident when he was told about the incident by PW-1 Ram Vijay. Attention of this Court was also drawn towards the two site plans prepared by the investigating officer at the instance of the witnesses namely, Shankar and Lalla Ram and it is highlighted that both these witnesses have not been cited in the charge-sheet.

13. It is next submitted that since the statements of material witnesses of the prosecution have been recorded, there is no apprehension that the witnesses may be pressurized.

14. It is also submitted that the applicant is in jail in this case since 09.01.2023 and criminal history of six cases have been explained in para nos. 40-42 of the bail application and in supplementary affidavit dated 11.03.2024 and out of four such cases, in three cases final reports have been submitted and in one case, he has been granted bail. 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.

15. Learned A.G.A., on the other hand, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and there are three witnesses, two of which have seen the applicant and other co-accused persons going towards the direction where the deceased had gone and one witness, namely, Prem Kumar had seen the applicant as well as the co-accused Tillu @ Devendra Pal Yadav assaulting the deceased with some weapon and country made pistol.

16. Shri Ram Prakash Singh, learned counsel for the informant/complainant vehemently submits that the applicant and other co-accused Tillu @ Devendra Pal Yadav have been seen by the witness Prem Kumar, assaulting the deceased and there are two other witnesses, who have seen the applicant and co-accused Tillu @ Devendra Pal Yadav going towards the direction where the deceased had gone and also heard saying them that it is an opportunity for elimination of the deceased and also that the first bail application of applicant has been rejected by this Court on 06.11.2023 and there is no change in circumstances since then. Thus, applicant is not entitled for release on bail, more so, when he is having criminal history of six cases. It is also submitted that one factual witness has yet to be examined before the trial court.

17. Having heard learned counsel for the parties and having perused the record, it is evident that name of the applicant and other accused persons was surfaced in the F.I.R. lodged by the informant on the basis of suspicion as there was a long standing political enmity between the informant and accused persons pertaining to measurement of agricultural plot. Witness Prem Kumar was also a panch witness of the inquest, which was drawn on 07.04.2022 and his opinion with regard to the death of the deceased was that deceased had died on account of injuries sustained by him. It is after a month i.e. on 08.05.2022 statement of this witness i.e. Prem Kumar was recorded by the

investigating officer, wherein for the first time witness Prem Kumar stated to have seen the incident and the role of catching hold was assigned to co-accused Amresh Yadav and Dileep Yadav, who have already been granted bail while the role of assault with some weapon has been assigned to the co-accused Tillu @ Devendra Pal Yadav who has also been released on bail, however, the role of firing with country-made pistol has been assigned to the applicant.

18. Significantly an application appears to have been moved by the informant on 24.04.2022 addressed to the Chief Minister requesting that the matter be fairly investigated. Various allegations have been levelled in this application with regard to the role of the then Station House Officer of Police Station Mohammadpur Khala, District Barabanki and thus it prima facie appears that when the investigation was transferred to the Crime Branch, Ayodhya, statement as well as additional statement of the witness Prem Kumar was recorded by the investigating officer as well as by the magistrate under Section 164 Cr.P.C. Postmortem report of the deceased would reveal that six injuries are shown to have been sustained by the deceased including a firearm wound and 22 metallic pellets were also recovered from the site of the injuries and blackening and tattooing was also found around the wound.

19. It appears to be an admitted situation that there is only one star witness of this crime i.e. Prem Kumar. Admittedly, he was a panch witness of the inquest, which was drawn on 07.04.2022 and he did not disclose anything to the police officer, who was preparing the inquest or to the informant, who is related to him as his uncle about the incident and it was after a month i.e. on 08.05.2022, his statement has been recorded wherein he for the first time alleged imputation against the applicant and co-accused Tillu @ Devendra Pal Yadav. The deceased as per the post mortem report has sustained five lacerated wounds on his face, head and cheeks etc. and one lacerated wound of gun shot injury in his stomach. Another feature is that the statement of three prosecution witnesses have been recorded before the trial Court i.e. P.W.1/ informant- Ram Vijay, P.W.2/ witness- Prem Kumar and P.W.3/ witness Ram Sawle. Witness- Ram Sawle, who had claimed to have overheard a conversation going on between the accused persons of eliminating the deceased has not stated so before the trial Court. P.W.1/ informant has admitted not to have seen the occurrence at all and stated in his cross examination that the name of the accused persons was stated by him in his in- chief examination as he was told to do so by his counsel and also that it was he who has informed about the names of accused persons to witness Prem Kumar as he was not knowing their names from before.

20. The law is well settled that in those criminal cases which are based on the testimony of a single prosecution eye witness, his testimony must be wholly reliable. Thus, there are following points, which are emerging in favour of the applicant :-

(i) No weapon of assault has been recovered from his possession or on the pointing of the applicant.

(ii) The first statement of the witness Prem Kumar was recorded after one month of the incident wherein he had imputed allegation against the applicant and co-accused Tillu @ Devendra Pal Yadav.

(iii) Witness Prem Kumar was also a panch witness of the inquest of the dead body of the deceased drawn on 07.04.2022 and he did not narrate anything pertaining to the incident to the officer, who was drawing inquest.

(iv) The informant is the uncle of the witness Prem Kumar and the incident has also not been informed by the witness Prem Kumar to the informant.

(v) Since the rejection of the bail application of applicant on 06.11.2023, the statement of P.W.2/ Prem Kumar and P.W.3/ Ram Sawle has been recorded before the trial Court.

(vi) The applicant is in jail in this case 09.01.2023 and criminal history of six cases has been adequately explained.

(vii) Bail application of identically placed co-accused namely, Tillu @ Devendra Pal Yadav has been allowed by this Court and out of 15 witnesses cited in the charge-sheet, only four witnesses have been produced yet.

21. Thus, having regard to the reasons mentioned hereinbefore, in the considered opinion of this Court, there is material change in the circumstances since rejection of the first bail application of applicant and the facility of bail may safely be extended to the applicant. The presence of the applicant could be secured before the trial court by placing adequate conditions.

22. In result, the bail application moved by applicant is hereby **allowed**.

23. Let the accused/applicant- **Pappu @ Krishna Pal Yadav** 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 and 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.

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

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

26. 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.

Order Date :- 6.5.2024

Shravan