

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4554 of 2024

Applicant :- Radhey Shyam

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

Counsel for Applicant :- Dharmendra Kumar Tripathi,Vikas Pandey

Counsel for Opposite Party :- G.A.,Desh Raj Singh,Shailendra Singh

Hon'ble Rajesh Singh Chauhan,J.

1.Heard Sri Dharmendra Kumar Tripathi, learned counsel for the applicant, Sri G.D. Bhatt, learned Additional Government Advocate for the State and Sri Desh Raj Singh, learned counsel for the informant.

2. Learned counsel for the applicant has filed supplementary affidavit, the same is taken on record.

3. As per learned counsel for the applicant, the present applicant (Radhey Shyam) is languishing in jail since 29.10.2023 in Case Crime No.125 of 2023, under Sections 323, 304 & 506 I.P.C., Police Station-Inhauna, District-Amethi. He has further submitted that the present applicant has been falsely implicated in this case as he has not committed any offence as alleged in the prosecution story so narrated in the First Information Report (in short F.I.R.).

4. Learned counsel for the applicant has stated that this Court has granted bail to the co-accused, namely, Satish Yadav vide order dated 17.05.2024 passed in Criminal Misc. Bail Application No.265 of 2024; Satish Yadav vs. State of U.P., wherein the facts and circumstances of the issue in question have been considered in detail. The order dated 17.05.2024 reads as under:-

"1.Heard Sri Anil K. Tripathi, learned counsel for the applicant, Sri G.D. Bhatt, learned Additional Government Advocate for the State and Sri Desh Raj Singh, learned counsel for the informant.

2. As per learned counsel for the applicant, the present applicant (Satish Yadav) is languishing in jail since 29.10.2023 in Case Crime No.125 of 2023, under Sections 323, 304 & 506 I.P.C., Police Station-Inhauna, District-Amethi. He has further submitted that the present applicant has been falsely implicated in this case as he has not committed any offence as alleged in the prosecution story so narrated in the First Information

Report (in short F.I.R.).

3. Attention has been drawn towards the impugned F.I.R., which was lodged on 22.10.2023 for the alleged incident dated 21.10.2023 making allegations against the four accused persons including the present applicant. The role attributed to the present applicant is of assault through Axe upon Shiv Prasad (since deceased). The same allegation has been levelled against one co-accused Rakesh. The allegations against the other co-accused persons have been levelled of assault through stick and cane (Danda).

4. At this stage, attention has been drawn towards Annexure No.5 of the applicant, which is an F.I.R. bearing Case Crime No.0124 of 2023, under Sections 147, 149, 308, 452, 427, 323 & 506 I.P.C., Police Station-Inhauna, District-Amethi which was lodged from the side of the applicant against the side of the informant of the impugned F.I.R. The aforesaid F.I.R. was lodged on 21.10.2023. Therefore, learned counsel for the applicant has stated that if the prosecution story of both the F.I.Rs. are taken on its face value, prima-facie, this is a case of free fight between the two parties. Initially, the F.I.R. against the present applicant has been lodged in minor sections whereas the F.I.R. against the other side i.e. the side of the informant has been lodged under more serious sections. Though the injured person whose name has been indicated in the impugned F.I.R., has died while taking treatment in the hospital after about six days, therefore, the charge-sheet has been filed under various sections including the Section 304 I.P.C.

5. Sri Tripathi, learned counsel for the applicant has shown Annexure No.2 of the bail application which is anti-mortem injuries sustained from the side of the informant which indicates that the victim has sustained serious injuries. However, Sri Tripathi has placed reliance of the reference of the Medical Jurisprudence Theory written by Sri Modi by submitting that such injuries may not cause from Axe and those injuries may likely be caused from other blunt object. He has also shown the injury report from the side of the present applicant which has been annexed as Annexure No.6 to the bail application which shows that the injuries so received from the side of the applicant are five in number but simple in nature.

6. Sri Tripathi has referred Annexure Nos.CA-5, CA-6 & CA-9 of the counter affidavit of the State showing the statement of various persons including the independent eye witnesses. He has shown the statement of one Smt. Renu Mishra who has categorically stated that at the time of alleged incident when there was free fight between the parties Rakesh and Radhey Shyam reached on the roof and started throwing bricks. Not only the above, one Rajesh Yadav was also throwing bricks and the victim Shiv Prasad received serious head injury from the bricks thrown by Rajesh Yadav, resultant thereof, he started bleeding from his head and he fell down on the ground. There is an independent eye witness, namely, Sri Vijay Shankar Mishra who had also narrated the same story but as per him the victim Shiv Prasad received brick injuries from the piece of brick thrown by one Rakesh.

7. Sri Tripathi has also submitted that if the statement of the independent witnesses and other witnesses are perused, this court may find that the independent witnesses have not stated that the present applicant has

attacked on the victim through Axe. Sri Tripathi has reiterated that on the basis of the prosecution story, on the fateful day there was free fight between the two parties without having any motive or intention to kill each other, but on account of that free fight both the sides have received injuries and the victim (Shiv Prasad) from the side of the informant unfortunately died. Further, the first aggressors are from the side of the informant, however, this fact has been disputed by the learned counsel for the informant.

8. Sri Tripathi has further drawn attention of this Court towards the order of Apex Court dated 25.01.2023 passed in Special **Leave Petition (Criminal) No.7857 of 2022; Ashish Mishra @ Monu vs. State of U.P.** referring para-18 thereof, wherein the Apex Court has observed that if there are two separate F.I.Rs. with different narratives but the place of occurrence and substratum of the incident are the same, the question as to who were the aggressors or responsible for the unfortunate ghastly incident would be ascertained only after a full-fledged trial.

9. Sri Tripathi has submitted that the aforesaid observation of the Apex Court made in the case in re: **Ashish Mishra @ Monu** (supra) would be applicable in the present case too. He has submitted that the trial is going on. In para-14 of the bail application, the prior criminal history of the present applicant has been explained enclosing therewith the copy of relevant bail orders. Therefore, Sri Tripathi has submitted that the charge-sheet has been filed and if the present applicant is released he shall not misuse the liberty of bail and shall abide by all terms and conditions of the bail order and shall cooperate with the trial proceedings properly.

10. Per contra, Sri Desh Raj Singh, learned counsel for the informant has opposed the prayer for bail of the present applicant placing reliance of Annexure No.1 of his counter affidavit which is a report of the site map. As per the site map, no piece of bricks have been found at the place of incident. Therefore, Sri Singh has submitted that if any of the parties had thrown the bricks or piece of bricks those bricks/ piece of bricks must have been indicated in such site map. As per the aforesaid site map it has been indicated that at the place of incident in question one Sri Vijay Shankar Mishra was running his small tea shop.

11. Replying the aforesaid contention of learned counsel for the informant, Sri Tripathi has stated that this is an admitted case that the applicant is the owner of brick kiln and incident in question had taken place near and at the brick kiln, therefore, so many bricks/ piece of bricks were available at the place of incident. Further, such independent witness Sri Vijay Shankar Mishra has recorded his statement saying that the injured/ victim received head injury from the brick thrown by one Rakesh. Even no independent eye witnesses have stated that the victim had received head injury from the applicant.

12. Learned counsel for the informant has also stated that since the present applicant is a resourceful and powerful person, therefore, he managed the investigation and the statement of the eye witness/ witnesses are not appropriate but those have been recorded so as to extend the help to the present applicant. However, he has not disputed the story of free fight between the two parties.

13. Learned Additional Government Advocate has also submitted that this is a case of free fight between the two parties and the injuries have been received from both the side. On account of serious head injuries, the victim Shiv Prasad died while taking treatment after about 5-6 days. As per the F.I.R., the present applicant was possessing the Axe but as per the statement of the independent eye witnesses the present applicant had also started throwing bricks upon the other side inasmuch as most of the independent witnesses have not said that the present applicant was having Axe in his hand. Therefore, he has requested that the instant bail application may be rejected.

14. Having heard learned counsel for the parties and having perused the material available on the record and considering the arguments advanced by the learned counsel for the parties, the fact that there was a free fight between both the parties and both the sides have received injuries, for the same incident the first F.I.R. was lodged from the side of the applicant, initially the F.I.R. against the present applicant has been lodged in minor sections whereas the F.I.R. against the other side i.e. the side of the informant has been lodged under more serious sections, the independent witnesses have not stated that the present applicant has attacked on the victim through Axe, having regard the dictum of Apex Court rendered in the case in re: **Ashish Mishra @ Monu** (supra), the undertaking that the present applicant shall not misuse the liberty of bail and shall abide by all terms and conditions of the bail order and shall cooperate with the trial proceedings properly, without expressing any opinion on merits of the case, I find it appropriate that the present applicant may be enlarged on bail. Therefore, the instant bail application is allowed.

15. Let the applicant (Satish Yadav) be released on bail in the aforesaid case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as

abuse of liberty of bail and proceed against him in accordance with law. The present applicant shall not leave the country without prior permission of the Court."

5. Learned counsel for the applicant has stated that against the present applicant there is criminal history of two cases, which have been explained in paras-3 & 4 of the supplementary affidavit filed today, wherein the present applicant has been granted bail by the learned court below and the orders thereof have been annexed as Annexure Nos.A-1 & A-2 to the supplementary affidavit.

6. Learned counsel for the applicant has submitted that general allegations have been levelled against the present applicant and those are lesser than the allegations so levelled to the co-accused, Satish Yadav, therefore, the present applicant is having better case than the co-accused, Satish Yadav, hence, on the basis of the principles of parity, the present applicant may also be enlarged on bail. He has also submitted that the charge-sheet has been filed and if the present applicant is released he shall not misuse the liberty of bail and shall abide by all terms and conditions of the bail order and shall cooperate with the trial proceedings properly.

7. On the other hand, learned Additional Government Advocate as well as learned counsel for the informant have, however, opposed the prayer for bail of the present applicant by submitting that since the role of the present applicant was found in the commission of crime, therefore, he is not entitled for grant of bail, but they could not dispute the aforesaid contentions of learned counsel for the applicant.

8. Having heard learned counsel for the parties and having perused the material available on the record, without expressing any opinion on merits of the case, considering the arguments advanced by the learned counsel for the parties, the fact that there was a free fight between the parties and both the sides have received injuries, for the same incident the first F.I.R. was lodged from the side of the applicant, initially the F.I.R. against the present applicant has been lodged in minor sections whereas the F.I.R. against the other side i.e. the side of the informant has been lodged under more serious sections, general allegation of assault by stick has been levelled against the applicant, having regard the dictum of Apex Court rendered in the case in re: **Ashish Mishra @ Monu** (supra), the undertaking that the present applicant shall not misuse the liberty of bail and shall abide by all terms and conditions of the bail order and shall cooperate with the trial proceedings properly, also considering the fact that the allegations levelled against the present

applicant is lesser than the co-accused Satish Yadav who has been granted bail by this Court vide order dated 17.05.2024 (supra) and by following the principles of parity, I find it appropriate that the present applicant may be enlarged on bail. Therefore, the instant bail application is allowed.

9. Let the applicant (Radhey Shyam) be released on bail in the aforesaid case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law. The present applicant shall not leave the country without prior permission of the Court.

[Rajesh Singh Chauhan,J.]

Order Date :- 17.5.2024

Suresh/