

Neutral Citation No. - 2024:AHC-LKO:84242

RESERVED ON 11.12.2024

DELIVERED ON 16.12.2024

Case :- CRIMINAL MISC. BAIL APPLICATION No.10309 of 2024

Applicant :- Kunwar Ajay Pratap Singh @ Ajay Singh Silawar

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

Counsel for Applicant :- Rajendra Prasad Mishra, Anil Kumar
Tiwari, Ashutosh Kumar Singh, Awanish Kumar Upadhyay

Counsel for Opposite Party :- G.A., Ayush Singh, Saurabh
Kumar, Sushil Kumar Singh

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Rajendra Prasad Mishra (R.P. Mishra), learned counsel for the applicant, Sri Bhanu Pratap Singh, learned Additional Government Advocate for the State and Sri Sushil Kumar Singh (S.K. Singh), learned counsel for the informant/ complainant.

2. As per learned counsel for the applicant, the present applicant (Kunwar Ajay Pratap Singh @ Ajay Singh Silawar) is languishing in jail since 09.04.2024 in Case Crime No.251 of 2024, under Sections 147, 148, 149, 302, 307 & 120-B I.P.C. and Section 5/27 Arms Act, Police Station-Kotwali Nagar, District-Sultanpur.

3. Learned counsel for the applicant has 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. Attention has been drawn towards the impugned F.I.R. which was lodged on 08.04.2024 for the alleged incident dated 07.04.2024 and the allegation of firing has been levelled against the present

applicant and 2-3 unknown persons. On account of the aforesaid firing Sri Vijay Narayan Singh and Sri Anuj Sharma received firearm injuries. Sri Vijay Narayan Singh succumbed to such firearm injuries, however, Sri Anuj Sharma was admitted to the hospital for treatment.

5. Sri Mishra has submitted that in the F.I.R. no motive or intention has been attributed to the present applicant. He has further submitted that even at the time of preparation of inquest on 07.04.2024 at about 23:55 p.m. (Night) (Annexure No.2) nothing has been alleged against the present applicant, though the informant Satish Narayan Singh was one of the Panch witnesses.

6. Sri Mishra has pressed this plea with vehemence that if the complainant who lodged the F.I.R. on 08.04.2024 at about 10:26 a.m. levelling allegation against the present applicant he could have levelled allegation against the present applicant at the time of preparation of inquest. He has further submitted that the impugned F.I.R. has been lodged after preparation of the inquest and the postmortem report.

7. Sri Mishra has further submitted that if the prosecution story is considered on its face value, at the best the present case may be a case of sudden fight or provocation but this case may not be the case of murder for which the charge-sheet has been filed against the present applicant.

8. Sri Mishra has submitted that since the prosecution story so narrated in the F.I.R. is false and baseless, therefore, the charge-sheet has only been filed against the present applicant. Though on that point, learned Additional Government Advocate has stated that for other accused persons the investigation is going on.

9. Sri Mishra has drawn attention of this Court towards the statement of the complainant (Annexure No.5) wherein he has narrated the story that on 07.04.2024 the present applicant was consuming beer/ liquor along with the deceased and his other associates. All the persons started consuming the beer/ liquor along with snacks from 01:00 p.m. and remained there till 07:00 p.m. evening at Pallavi Hotel, Dariyapur, Sultanpur.

10. Sri Mishra has stated that had there been any prior enmity of the present applicant with the deceased, the present applicant would have not gone there and joined the company of those persons. There might be any sudden quarrel in spur of moment, resulting the incident in question. The complainant has levelled specific allegation against the present applicant. One Anuj Sharma, who was close to the deceased, also received firearm injuries from the fire shot done by the present applicant.

11. Sri Mishra has drawn attention of this Court towards the statement of Sri Sandeep Pandey, Security Guard of the Hotel, Shayam Babu, Manager of the Hotel, Tribhuvan Chaurasia, Cashier of the Hotel/ Beer Bar, Sushil Pandey, Waiter of the Hotel and Anuj Sharma the injured who received firearm injuries. From the statement of the aforesaid persons, Sri Mishra tried to submit that there was no prior enmity of the present applicant with the deceased or with Anuj Sharma and the incident in question might have occurred on account of sudden provocation in spur of moment inasmuch as when the aforesaid party was being concluded, on account of trivial issue one Ballu, who is close associate of the deceased, started fighting with the present applicant and said person Ballu slapped twice on the face of the present applicant. Thereafter, the present applicant allegedly went to his home and after carrying the Pistol he fired upon the deceased Vijay Narayan Singh. However, Sri Mishra has stated that the aforesaid

prosecution story is absolutely false and misconceived as the deceased was having chequered criminal history and some unknown persons might have killed him when the deceased came out from the hotel under the influence of heavy liquor. But even if such story is taken on its face value, then this is a case of culpable homicide not amounting to murder.

12. Sri Mishra has further drawn attention of this Court towards the dictum of Apex Court rendered in the case in re: **Manjeet Singh vs. State of Himachal Pradesh** reported in (2014) 5 SCC 697 and **Ram Pal Singh vs. State of Uttar Pradesh** reported in (2012) 8 SCC 289 to submit that at the max, as per the prosecution story the present applicant has not committed offence of murder but it was a culpable homicide not amounting to murder. Sri Mishra has referred paras-17 and 18 of the case in re: **Ram Pal Singh (supra)**, which read as under:-

“17. Section 300 of the Code states what kind of acts, when done with the intention of causing death or bodily injury as the offender knows to be likely to cause death or causing bodily injury to any person, which is sufficient in the ordinary course of nature to cause death or the person causing injury knows that it is so imminently dangerous that it must in all probability cause death, would amount to ‘murder’. It is also ‘murder’ when such an act is committed, without any excuse for incurring the risk of causing death or such bodily injury. The Section also prescribes the exceptions to ‘culpable homicide amounting to murder’. The explanations spell out the elements which need to be satisfied for application of such exceptions, like an act done in the heat of passion and without pre-meditation. Where the offender whilst being deprived of the power of self- control by grave and sudden provocation causes the death of the person who has caused the provocation or causes the death of any other person by mistake or accident, provided such provocation was not at the behest of the offender himself, ‘culpable homicide would not amount to murder’. This exception itself has three limitations. All these are questions of facts and would have to be determined in the facts and circumstances of a given case.

18. This Court in Vineet Kumar Chauhan v. State of U.P. [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915] noticed that academic distinction between “murder” and “culpable homicide not amounting to murder” had vividly been brought out by this Court in State of A.P. v. Rayavarapu Punayya [(1976) 4 SCC 382 : 1976 SCC (Cri) 659] where it was observed as under: (Vineet

Kumar case [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915] , SCC pp. 665-66, para 16)

“16. ... that the safest way of approach to the interpretation and application of Sections 299 and 300 IPC is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of Sections 299 and 300 IPC and drawing support from the decisions of this Court in Virsa Singh v. State of Punjab [AIR 1958 SC 465 : 1958 Cri LJ 818] and Rajwant Singh v. State of Kerala [AIR 1966 SC 1874 : 1966 Cri LJ 1509] , speaking for the Court, R.S. Sarkaria, J. neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the Court said that wherever the court is confronted with the question whether the offence is ‘murder’ or ‘culpable homicide not amounting to murder’, on the facts of a case, it [would] be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to ‘culpable homicide’ as defined in Section 299. ... If the answer to this question is in the negative the offence would be ‘culpable homicide not amounting to murder’, punishable under the First or the Second Part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be ‘culpable homicide not amounting to murder’, punishable under the First Part of Section 304 IPC. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative.”

13. Sri Mishra has submitted that the present applicant was having one more criminal history wherein he has been acquitted and there is no other criminal history of the present applicant. He has submitted that till date the charges have not been framed by the learned trial court and if he is released on bail, he shall cooperate in the trial proceedings properly and shall not misuse the liberty of bail.

14. Per contra, Sri Bhanu Pratap Singh, learned Additional Government Advocate and Sri S.K. Singh, learned counsel for the complainant/ informant have opposed the aforesaid bail application vehemently.

15. Sri Bhanu Pratap Singh has submitted that immediately after preparation of the inquest in the mid night of 07/08.04.2024, the F.I.R. was lodged on 08.04.2024 at 10:26 a.m. He has further submitted that while preparing the inquest there was no need to level any allegation against anyone inasmuch as the purpose of preparation of inquest is that on account of any incident one person died from the firearm injuries, his dead body was received and as per opinion of Pancha and the Sub-Inspector the dead body was sent for postmortem. After the postmortem having been completed the F.I.R. has been lodged. Therefore, the submission of Sri Mishra that in the inquest report no specific allegation has been levelled by the informant against the present applicant is misconceived. He has further submitted that as per the statement of various witnesses the culpability of the present applicant was found, therefore, the charge-sheet has been filed against him.

16. Sri Bhanu Pratap Singh, learned Additional Government Advocate has also submitted with vehemence that had this case been a case of sudden provocation or the murder was committed in the heat of passion and without premeditation, the present applicant would have killed Ballu who had beaten the applicant and had slapped twice on his face. But for such act of fighting of the present applicant with Ballu he would have not killed Vijay Narayan Singh after leaving the place for sometime and returning from home carrying his Pistol. Therefore, this is not the case of sudden provocation but, prima-facie, it appears that this is a case of pre-planned murder committed by the present applicant.

17. Sri S.K. Singh, learned counsel for the informant has adopted the aforesaid arguments of Sri Bhanu Pratap Singh, learned Additional Government Advocate and has further submitted that even the case laws so cited by the learned counsel for the applicant are not supporting him, rather, those case laws are supporting the prosecution case.

18. Sri S.K. Singh has submitted that for committing any offence in a sudden provocation or sudden fight the intervening period should not be so long inasmuch as if there is substantial cooling period between any incident and commission of crime, then the story of sudden provocation would be faded out.

19. In the present case, when one Ballu, who is associate of the deceased fought with the present applicant outside the restaurant and slapped twice on his face, then the present applicant left the hotel, went to his home through Motorcycle, returned to the hotel with his Pistol and straightaway fired upon the deceased and not upon Ballu. Since another injured person, namely, Anuj Sharma who was close associate of the deceased tried to save him the present applicant fired upon him also.

20. Sri S.K. Singh has drawn attention of this Court towards the anti-mortem report which shows that there are three entry wounds on the chest area of the deceased and three exit wounds. The anti-mortem injuries are as under:-

Anti-Mortem-Injuries:

“1. Entry wound of size 0.5x0.5 cm present over left side of Chest, 07cm above left Nipple with blackening of size 01x01 cm present around entry wound with shinging.

2. Entry wound of size 0.5x0.5 cm in Axillary line right side, 15cm below from apex of Axilla with tattooing present.

3. Entry wound of size 0.5x0.5cm present in right side Axillary line in Flank of abdomen, 32cm below from right apex of Axilla with Tattooing present.

4. Exit wound of size 0.5 x 0.5cm over back below left Scapula, 05cm from Midline with everted margin with partial Protrusion of metallic particle.

5. Exit wound of size 01x01cm over back, 17cm from midline in right side with everted margin.

6. Exit wound of size 01x01cm present over back in right side, just 01 cm above right PSIS with everted Margin.”

21. Sri Singh has therefore submitted that the present applicant having any plan, which may be disclosed and ascertained during the course of trial, murdered the deceased when his associate Anuj Sharma tried to save him he fired upon him who also sustained two firearm injuries on his vital parts i.e. Lower Chest and just below the lower Chest on the right side on abdomen region as well as on right Buttock region. Injury report is as under:-

“(i) A wound of size approx. 0.5 x 0.5 cm and 0.5 x 0.25 cm present on the right lower Chest and just below the lower Chest on the (Lt.) side on abdomen region, irregular margin, reddish colour bleeding, probing not done, about 12 cm from umbilicus.

(ii) A wound of size approx 0.5 x 0.5 cm present on the (Rt.) Buttock region, irregular margin, bleeding reddish colour probing not done, about 8.0 cm from deft region.”

22. Sri Singh has shown the statement of the injured, which has been annexed as Annexure No.15 with the bail application, wherein he being an eye witness and injured both has categorically levelled specific allegation against the present applicant of firing upon the deceased and upon him. He has stated that after long treatment he i.e. injured witness survived and he is able to record his evidence before the learned trial court.

23. Sri Singh has further submitted that on account of delaying tactics on the part of the present applicant the charges could not be framed by the learned trial court, however, learned counsel for the

applicant has advanced his arguments on 11.12.2024 on charges and has submitted that he may be discharged, however, no order has been passed by the learned trial court as on 11.12.2024.

24. Sri Singh has also submitted that this is a case of cold blooded murder, therefore, unless and until the evidence of the injured/ eye witness, namely, Anuj Sharma and all other relevant fact witnesses are recorded by the learned trial court, the present applicant should not be released on bail, otherwise, he would definitely influence the relevant/ fact witnesses.

25. Having heard learned counsel for the parties and having perused the material available on record, without entering into merits of the issue, considering the fact that the specific allegation of firing upon the deceased as well as the injured person has been levelled against the present applicant, the charge-sheet has been filed against him, various witnesses including injured eye witness have recorded their statement during investigation levelling allegation against the present applicant, the sudden fight occurred between the present applicant and one Ballu, who slapped twice on the face of the present applicant but he fired upon the deceased after a substantial interval also as he left the place for sometime; went to his home; returned back after sometime and straightaway fired upon the deceased with whom there was no sudden fight and the fact that till date the charges have not been framed and none of the fact/ relevant witnesses as well as the injured/ eye witness have been examined by the learned trial court, therefore, I do not find any good ground to grant the bail to the present applicant, at this stage.

26. Accordingly, the instant bail application is ***rejected***.

27. It is needless to say that after recording the evidence of injured/ eye witness, namely, Anuj Sharma and other relevant/ fact witnesses

by the learned trial court the present applicant may file his another bail application.

28. No order as to cost.

[Rajesh Singh Chauhan,J.]

Order Date :- 16.12.2024

Suresh/