

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12345 of 2023

Applicant :- Sachin Jaiswal

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

Counsel for Applicant :- Ashish Kumar Singh, Anand Kumar Yadav, Anuj Pandey

Counsel for Opposite Party :- G.A., Anil Kumar Tripathi, Sharad Tiwari

AND

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15314 of 2023

Applicant :- Manoj Yadav

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

Counsel for Applicant :- Brijesh Kumar Singh, Sushil Kumar Singh

Counsel for Opposite Party :- G.A., Anil Kumar Tripathi

AND

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12290 of 2023

Applicant :- Manoj Prajapati

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

Counsel for Applicant :- Firoz Ahmad Khan

Counsel for Opposite Party :- G.A., Anil Kumar Tripathi, Anil K Tripathi

Hon'ble Mohd. Faiz Alam Khan, J.

1. The above mentioned bail applications of applicant/ accused persons- Sachin Jaiswal, Manoj Yadav and Manoj Prajapati are connected with the same crime number and for the purpose of convenience are disposed of by passing this common order.

2. Heard Shri Jyotindra Misra, learned Senior Counsel, assisted by Mr. Anand Kumar Yadav for applicant- Sachin Jaiswal in Crl Misc. Bail Application No. 12345 of 2023, Shri Sushil Kumar Singh appearing for applicant- Manoj Yadav in Crl. Misc. Bail

Application No. 15314 of 2023 and Shri Firoz Ahmad Khan appearing for Manoj Prajapati, Shri Anil K. Tripathi, learned counsel for the informant/ complainant as well as learned AGA for the State and perused the record.

3. These bail applications have been moved by the accused/applicants- Sachin Jaiswal, Manoj Yadav and Manoj Prajapati for grant of bail, in Case Crime No. 374/2023, under Sections 147, 148, 323, 325, 307, 427 IPC, Police Station Poora Kalandar, District Ayodhya/ Faizabad, during trial.

4. Shri Jyotindra Misra, learned Senior Counsel while pressing the bail application on behalf of the applicant- Sachin Jaiswal vehemently submits that it is a case of false implication and only on account of prior established enmity the name of the applicant has been dragged into this case.

5. It is further submitted that the FIR of this case has been lodged by the son of the injured, namely, Harsh Jaiswal and the name of the applicant and another co-accused persons have emerged in this FIR only on the basis of suspicion as the informant and Harsh Jaiswal is not an eye witness of the crime as he has admitted in his statement recorded under Section 161 Cr.P.C.

6. It is further submitted that the statement of the injured Saheb Lal Jaiswal was recorded wherein he stated that all the accused persons have muffled their faces and he could only recognize the two assailants, namely, Manoj Yadav and Ravindra Pratap Singh @ Mukku Singh, as their faces were revealed during the 'marpit'.

7. It is further submitted that in this statement of the injured there is no whisper so far as the applicant- Sachin Jaiswal is concerned.

8. It is also submitted that additional statement of the injured Saheb Lal Jaiswal has also been recorded and it is in this additional statement the name of the applicant has surfaced as a conspirator and two witnesses, namely, Rakesh Kumar and Rakesh Jaiswal are shown to have overheard the planning being made by the applicant -Sachin Jaiswal and applicant- Manoj Yadav with other persons to eliminate the injured and it is also stated by the injured Saheb Lal Jaiswal as well as witnesses Rakesh Kumar and Rakesh Jaiswal that the above mentioned two witnesses Rakesh Kumar and Rakesh Jaiswal could not inform the injured.

9. It is vehemently submitted that the injured and applicant are

having an established enmity with regard to an immovable property as various criminal cases have been lodged by the injured Saheb Lal Jaiswal against the applicant and other co-accused persons and the involvement of the applicant later on has been made by the injured in order to further harass the applicant, while there is no evidence of any kind available against the applicant.

10. It is also submitted that the applicant is in jail in this case since 9.9.2023. The criminal history of the applicant has been explained in paragraph no.13,14 and 16 of the bail application as well as in paragraphs no. 2 and 3 of the supplementary affidavit dated 24.1.12024 and out of 15 cases shown as criminal history of the applicant- Sachin Jaiswal 8 cases have been lodged at the behest of injured Saheb Lal, out of which in two cases final reports have been submitted, proceeding of one case has been stayed by the Hon'ble High Court, in one case the bail application is pending before this Court, in another case the investigation is going on and in rest of the cases the applicant has been granted bail, while in 7 other cases shown as criminal history of the applicant in 5 cases final reports / closure reports has been submitted, while in one case pertaining to Goondas Act notice has been withdrawn and with regard to Case Crime No. 208/2004 the applicant- Sachin Jaiswal has been acquitted. There is no apprehension that the accused-applicant after release on bail, he may flee from the process of law or may otherwise misuse the liberty. Charge sheet in this case has already been submitted.

11. Shri Sushil Kumar Singh, learned counsel appearing for the applicant- Manoj Yadav, submits that the applicant has been falsely implicated in this case. In the FIR the applicant was not named and incident in the FIR is shown to have caused as the injured person was having enmity with co-accused persons - Sachin Jaiswal, Sunil Jaiswal, Anuj Jaiswal and Amit Jaiswal and there was no mention of the name of the applicant. However, in the statement of the injured recorded under Section 161 Cr.P.C. he has taken the name of the applicant as one of the accused.

12. It is vehemently submitted that the name of the applicant has been mentioned in the statement of the injured in order to falsely implicate the applicant as the injured is having enmity with the uncle of the applicant and the whole story of the FIR has been changed by the injured person in his statement recorded under Section 161 Cr.P.C., thus it is evident that the injured has given a false statement.

13. It is further submitted that the manner in which the identity

of the applicant has been established could not be believed. Had the injured would been in a position to see the face of the applicant, the name of the applicant should have been mentioned in the FIR as admittedly the applicant- Manoj Yadav is known to the informant from before the alleged incident and thus the case of the prosecution that the applicant could only be identified by the injured person may not be believed in the facts and circumstances of this case.

14. It is further submitted the confessional statement of the applicant obtained while in the custody of the police may not be proved against the applicant by virtue of bar contained under Section 26 of the Indian Evidence Act.

15. It is also submitted that criminal history of the applicant has been explained in paragraph 14 of the bail application and paragraph 2 of the supplementary affidavit dated 30.1.2024 and out of these 8 cases the applicant has been granted bail by the competent criminal courts in 3 cases and bail orders pertaining to these cases are placed on record and in one case the applicant has not been summoned till date by the trial court. In one case the applicant has been acquitted by the trial court and in two cases pertaining to Goondas Act the proceedings have been closed and another case with regard to 110G Cr.P.C. proceedings have been closed. He is in jail since 4.8.2023 and there is no apprehension that the accused-applicant after may otherwise misuse the liberty.

16. Shri Firoz Ahmad Khan, learned counsel for the applicant-Manoj Prajapati submits that the applicant was not named in the FIR nor his name has been taken by the informant and injured person in their statement recorded under Section 161 Cr.P.C. and he has also not been identified by the injured and his name has only surfaced in the confessional statement of co-accused Manoj Yadav which has been obtained while co-accused Manoj Yadav was in the custody of the police and the same may not be believed and the same could also not be proved against him by virtue of bar contained under Section 26 of the Indian Evidence Act. Thus apart from the confessional statement of co-accused Manoj Yadav there is no iota of evidence available against the applicant.

17. It is further submitted that criminal history of 6 cases is existing against the applicant has been explained in paragraph 23 of the bail application and paragraph 3 of the supplementary affidavit dated 13.10.2023 and out of these 6 cases the applicant has been granted bail by the competent criminal courts and he is in jail in this case since 4.8.2023 and there is no apprehension that the accused-applicant after may otherwise misuse the

liberty.

18. Shri Anil K. Tripathi, learned counsel for the complainant/ informant vehemently submits that on account of the previous enmity the applicant Sachin Jaiswal and applicant- Manoj Yadav hatched a conspiracy to eliminate the injured Saheb Lal Jaiswal and when they were hatching the conspiracy two witnesses, namely, Rakesh Jaiswal and Rakesh Kumar were present at the Tea Stall of one Brijesh, however these two witnesses could not inform the injured Saheb Lal Jaiswal resulting in the brutal assault to the injured by the accused persons.

19. It is vehemently submitted that the applicant- Manoj Yadav and another accused namely, Ravindra Pratap Singh @ Mukku Singh, has been identified by the injured persons as their faces were revealed during the course of 'marpit' while the other accused persons have muffled their faces.

20. It is also highlighted that accused persons are hardened criminals and all of them are carrying history of many cases. While drawing the attention of this Court towards the counter affidavit filed by the informant/ complainant in CrI. Misc. Bail Application No. 12345 of 2023, it is vehemently submitted that the injured was so brutally beaten that he had remained hospitalized from 27.7.2023 to 30.8.2023. He had sustained fractures of many limbs and his testicles were also squeezed in order to kill him and the medical report of the injured Saheb Lal Jaiswal placed at page no. 11 to 16 of the counter affidavit would itself reveal that the accused persons had almost killed injured Saheb Lal Jaiswal.

21. It is vehemently submitted that the incident has been caused on account of established enmity of the injured with the applicant Sachin Jaiswal and Manoj Yadav and keeping in view the long criminal history of the applicants and the brutality with which the offence has been committed the applicants are not entitled to be released on bail.

22. Learned AGA also opposes the prayer of bail of the applicants on the ground that the applicants are accused of committing heinous offence and they are also carrying long criminal history.

23. Having heard learned counsel for the parties and having perused the record, it is revealed that the First Information Report of this case has been lodged by the son of injured Saheb Lal Jaiswal, namely, Harsh Jaiswal alleging that on 26.7.2023 at 7.00 a.m. his father had gone to Tehsil Milkpur and when he

was returning to Faizabad Court and reached Nawwa Ka Kuwan, a Scorpio vehicle of gray colour bearing Registration No. U.P. 42 K 8097 over took him and 7 persons having their faces muffled emerged therefrom and started assaulting his father and when a crowd assembled there, they fled away from the scene. It is also stated that information of this incident was given on dial 112 and before this incident attempts were also made on two occasions to kill his father pertaining to which FIR No. 344/2022, at Police Station Inayat Nagar and FIR No. 226/2023 at Police Station Cantt. were lodged. It is also alleged that the father of the informant had also lodged about 7 First Information Reports against Sachin Jaiswal, Sunil Jaiswal, Anoop Jaiswal and Anuj Jaiswal. Injured Saheb Lal Jaiswal was medically examined on 26.7.2023 at 2.10 P.M. and one diffuse swelling has been found on right wrist joint, complaint of pain on left elbow joint, diffuse swelling on left leg and diffuse swelling on right leg was also noticed. All these 4 injuries were advised for X-ray. The injured at the time of examination was found conscious and oriented. These injuries are shown to have been caused by hard and blunt objects.

24. Perusal of the record would further reveal that a discharge summary of City Hospital and Trauma Centre, Lucknow has also been placed at page no. 11 of the counter affidavit filed by the informant which would show that injured Saheb Lal Jaiswal has been diagnosed as under:-

"Tenderness at fracture sites. Comminuted fracture right tibia middle 1/3rd with comminuted fracture segmental right fibula with comminuted fracture left femur with fracture tibial tuberosity left with comminuted fracture lower 1/3rd BB right femur with fracture shaft radius left with fracture base IMC left hand to 2."

He also shown to have remained hospitalized in this hospital from 27.7.2023 till 30.8.2023.

25. The statement of Harsh Jaiswal was also recorded by the Investigating officer, wherein he stated to have reached at the spot after getting the information of the incident and by that time the injured had already been hospitalized, thus the informant is not an eye witness of the incident.

26. Statement of the injured Saheb Lal Jaiswal was recorded by the Investigating Officer, wherein he reiterated the manner of assault given by the 7 persons who had muffled their faces, with 'lathi and iron rods' and added that during the course of assault the faces of 2 miscreants were revealed to whom he can identify. On this the Investigating Officer has shown

photograph of accused persons -Manoj Yadav, Manoj Prajapati Ravindra Pratap Singh @ Mukku Singh on his mobile phone to the informant, who were earlier arrested and sent to prison and the injured identified applicant Manoj Yadav and co-accused Ravindra Pratap Singh @ Mukku Singh as the two persons whose faces were revealed during 'marpit'.

27. Additional statement of the injured Saheb Lal Jaiswal was also recorded wherein he stated that conspiracy to murder him has been hatched by Sachin Jaiswal and when they were making plan, two persons, namely, Rakesh Kumar and Rakesh Jaiswal were present at the Tea Stall of Brijesh at Faizabad and they could not inform him.

28. Statement of Rakesh Kumar and Rakesh Jaiswal is also shown to have been recorded wherein they claimed to have overheard a conversation held between Sachin Jaiswal, Manoj Yadav and other persons wherein they were hatching conspiracy to eliminate the injured Saheb Lal Jaiswal and also that they could not inform the injured timely.

29. Earlier on the arrest of co-accused Manoj Yadav his confessional statement has also been recorded wherein he stated that his uncle Ramesh Yadav is employed at the office of the District Magistrate and injured Saheb Lal had humiliated his uncle many times and also abused him and when these incidents were told by his uncle to him he hatched a plan to teach a lesson to Saheb Lal Jaiswal and has caused the incident on 26.7.2023 with the help of other co-accused persons.

30. The above facts investigated by the Investigating Officer would clearly demonstrate that the injured Saheb Lal Jaiswal and applicant- Sachin Jaiswal are having a long standing enmity between them. Many criminal cases have been instituted against the applicant- Sachin Jaiswal at the behest of Saheb Lal Jaiswal. It also appears to be an admitted situation that the incident is shown to have been caused by 7 persons who have muffled their faces and in the first statement of the injured he could only recognize the applicant- Manoj Yadav and Ravindra Pratap Singh @ Mukku Singh. The name of the applicant- Sachin Jaiswal has surfaced in the additional statement of the injured persons, that too only with regard to hatching a conspiracy. The two witnesses, namely, Rakesh Jaiswal and Rakesh Kumar who have claimed to have overheard the conversation stated to have failed to communicate the plan to the injured person. One of the witness had stated that he attempted to make a telephone call but the call could not connect. The name of the applicant- Manoj Prajapati has surfaced in the confessional statement of co-accused/ applicant Manoj Yadav. Thus the role of these two

accused persons/ applicant- Sachin Jaiswal and Manoj Prapati is distinguishable from the role of applicant- Manoj Yadav. Applicant – Manoj Yadav has been identified by the injured as an assailant in his first statement recorded under Section 161 Cr.P.C.

31. Thus, having regard to all the facts and circumstances of this case, in the considered opinion of this Court keeping in view the injuries sustained by the injured and all the evidence/ material available on record, a case of bail is made out in favour of the applicant- Sachin Jaiswal and Manoj Prajapati. While the role of the applicant- Manoj Yadav is distinguishable on two scores, as apart from having motive, he has been identified by the injured at the first instance, when the statement of the informant was recorded by the Investigating Officer under Section 161 Cr.P.C.

32. Thus, the applicant- Manoj Yadav is not entitled to be released on bail.

33. In result, bail application moved on behalf of the applicant- **Manoj Yadav** is *rejected* and bail application moved on behalf of the applicants- **Sachin Jaiswal** and **Manoj Prajapati** is *allowed*.

34. Let the applicants- **Sachin Jaiswal and Manoj Prajapati** involved in the aforesaid case be released on bail on their furnishing personal bonds with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

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

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

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

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

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

37. 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.

38. It is provided that trial court shall proceed with the trial with utmost expedition and the applicant Manoj Yadav may renew his prayer of bail after 4 months or after recording of the statement of injured, which ever is earlier.

Order Date :- 27.2.2024

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