

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11258 of 2024

Applicant :- Trayudh Nath Shukla @ Chirkut

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

Counsel for Applicant :- Ramakar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Karunesh Singh Pawar,J.

Heard learned counsel for the applicant as well as learned AGA for the State.

This is second bail application. The first bail application of the applicant was rejected vide order dated 12.01.2024 passed in criminal misc. bail application No. 1043 of 2023. The order dated 12.01.2024 is extracted below:-

"1.Heard Mr. Baljeet Singh, Advocate, holding brief of Mr. Onkar Pandey, learned counsel for the applicant, Ms. Nikita Mishra, learned Additional Government Advocate for the State and perused the record, on this application for bail in case crime No.150 of 2021 under sections 323, 452, 302 I.P.C., P.S. Ramganj, district Amethi.

2.It is alleged in the first information report that on 27.10.2021 at about 11.00 in the night, some unknown person with intent to kill has assaulted with axe on the head of the husband of the informant. Due to that, head of husband of the informant was ruptured and grievous injury was sustained. The informant was also attacked, due to that, she woke up and started crying, consequently, the assailants ran away. Information was given to the police at 11.00p.m. on 112 number and the injured was taken to district hospital, Sultanpur, from where, he was referred to Medical College, Lucknow and is under treatment.

3.Learned counsel for the applicant submits that in the post mortem, following ante mortem injuries have been found :

1. 10 x 5cm parietal bone Lt. side of head is absent.

2. Old healed injury Lt. side of head.

The cause of death is septicemia. It is submitted that the case would fall under section 304 I.P.C. He has invited attention of this court towards discharge summary of the deceased who was admitted in trauma centre, Department of Neurosurgery, K.G.M.U., Lucknow on 28.10.2021. He remained under treatment till 22.11.2021 when he was discharged and was called upon after fifteen days for review in Neurosurgery. During this period after discharge, he died due to septicemia and not because of assault made upon him. In this context, learned counsel has relied on judgment of Supreme Court in Ganga Dass alias Godha versus State of Haryana 1994 Supp (1) SCC 534 wherein considering the fact that the injured deceased was operated but due to some complications, he died as a result of cardio failure. The conviction of the appellant was reduced from the offence under section 302 to Section 304 Part II I.P.C.

He has further relied on a judgment in Criminal Appeal No.2137 of 2015 Smt. Sudha and another versus State of U.P. rendered by a coordinate Bench of this Court at Allahabad, in which also while considering the septicemia as the cause of death of the deceased/victim, the sentence was reduced from section 302 to Section 304 Part-II I.P.C.

It is submitted that the occurrence is of 27.10.2021, the first information report has been

lodged on 28.10.2021 without naming anybody. In the statement under section 161 CrPC, the complainant for the first time has taken the name of the applicant. Three more eye-witnesses have been produced before the trial court and all of them though did not deny the incident but have stated that they have reached at the place of occurrence after few minutes and are not the eye witnesses. The applicant has no previous criminal history. The applicant is in jail since 28.10.2021.

It is further submitted that there is no possibility of the applicant of fleeing away after being released on bail or tampering with the witnesses. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail.

4.Learned A.G.A., per contra, opposed the prayer for bail. She submitted that the complainant was in distress and her husband was so badly assaulted that half of the side of the head was chopped out which is evident from ante mortem injuries in the post mortem report, due to that, she may not have taken the name of the applicant while lodging the first information report. However, on the very next day, she has assigned the complicity of the applicant. Before the trial court also, the statement of the complainant as P.W.1 remained intact. The complicity of the applicant is evident. There is eye witness account. It is not a fit case for bail.

5.Having heard learned counsel for the applicant and learned A.G.A. as also considering the judgments referred to above, I am of the view that at appropriate stage of the trial after the evidence is complete it would be seen whether the applicant has to be tried under section 302 I.P.C. or any other section with lesser offence.

Contention of the learned A.G.A. appears to have force. There is eye witness account showing complicity of the applicant. Injury No.1 in the post mortem report is a grievous injury, due to that the patient remained admitted for approximately 20 days and ultimately died of septicemia. It is a heinous offence. Looking to the complicity of the applicant and severity of the crime, I am not inclined to enlarge the applicant on bail.

6.The bail application is rejected.

The trial court is directed to conclude the trial, expeditiously and preferably within a period of six months from the date of production of a copy of this order.

7.Let a copy of this order be transmitted to the trial court within three working days."

Learned counsel for the applicant submits that a perusal of the rejection order shows that while rejecting the bail application, the trial court was directed to conclude the trial preferably within a period of six months from the date of production of copy of the order. The office was also directed to send copy of the order to the trial court within three working days.

Learned counsel for the applicant further submits that six months have passed, however, till date trial has not concluded. Out of sixteen witness, six witnesses of fact have been examined. No other witness of fact is left to be examined. Statement of the witnesses are on record. He further submits that trial will take some time to conclude and is not likely to be concluded in the near future. The applicant is 65 years old. He is languishing in jail since 28.10.2021 without having any criminal antecedents.

It has been further submitted that since the fact witnesses have been examined, there is no chance of tampering with the prosecution.

Learned AGA has opposed the bail application, however, could not dispute these facts.

On due consideration to the period of incarceration gone into by the applicant as he is in jail since 28.10.2021 as well as the fact that the applicant is 65 years old; all the fact witnesses have been examined; there appears to be no chance of tampering with the prosecution evidence and in view of the judgment of the Apex Court passed in the case of ***Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) 9 SCC 813***, I find it to be a fit case for enlarging the applicant on bail.

Accordingly, the bail application is allowed.

Let the applicant ***Trayudh Nath Shukla @ Chirkut***, involved in Case Crime/FIR No. 150/2021, under Sections 323/452/302 IPC, Police Station - Ramganj, District - Amethi, be released on bail 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 which are being imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence during the trial.

(ii) The applicant will not pressurize/ intimidate the prosecution witness.

(iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(iv) 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.

(v) 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.

(vi) 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 applicant fails 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.

Order Date :- 3.12.2024

R.C.