

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1356 of 2025

Applicant :- Vishnu Kumar Alias Prashant Raghav

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar, Pramod Kumar, Sanjay Kumar Rajbhar, Yashpal Yadav

Counsel for Opposite Party :- G.A., G.S. Chauhan

Hon'ble Rajeev Misra, J.

1. Heard Mr. Pramod Kumar, the learned counsel for applicant and the learned A.G.A. for State-opposite party-1.

2. Perused the record.

3. This repeat application for bail has been filed by applicant-Vishnu Kumar Alias Prashant Raghav seeking his enlargement on bail in Case Crime No. 202 of 2023 under Sections 147, 342, 302, 376D I.P.C., Police Station-Gandhi Park, Atrauli, District-Aligarh, during the pendency of trial i.e. Sessions Trial No. 2077 of 2022 (State Vs. Kukkoo @ Abhimanyu and others) under Sections 147, 342, 302, 376D I.P.C., Police Station-Gandhi Park, Atrauli, District-Aligarh, now pending in the Court of Additional Sessions Judge, F.T.C., Court No. 1, Aligarh.

4. The first bail application of applicant was rejected by this Court by a detailed order dated 04.08. 2023 passed in Criminal Misc. Bail Application No. 12386 of 2023 (Vishnu Kumar @ Prashant Raghav Vs. State of U.P.) alongwith connected bail application. For ready reference, the order dated 04.08.2023 is reproduced herein-under:

"1. Heard Mr. Yashpal Yadav, Advocate, holding brief of Mr. Uljhan Singh

Bind, the learned counsel for applicants, the learned A.G.A. for State and Mr. G.S. Chauhan, the learned counsel representing first informant.

2. Two supplementary affidavits filed by the learned counsel for applicants and the photo copy of the F.S.L. report and the order dated 10.05.2023 placed by the learned counsel representing first informant before Court, are taken on record.

3. Perused the record.

4. These applications for bail have been filed by applicants-Vishnu Kumar @ Prashant Raghav and Lakshman Raghav @ Kaka seeking their enlargement on bail in Case Crime No. 202 of 2022, under Sections 147, 342, 302, 376D, Police Station-Atrouli, District-Aligarh during the pendency of trial.

5. Record shows that in respect of an incident, which is alleged to have occurred on 13.05.2022, a written report was submitted by the father of the victim. The same is on record at page 46 of the supplementary affidavit dated 31.07.2023 filed by the learned counsel for applicants. As per the said written report, no person has been nominated in the crime in question. Subsequently, on 14.05.2022, another written report was submitted by the father of the deceased. The same is on record at page 43 of the aforementioned supplementary affidavit. In the aforesaid written report, 2 persons namely Vishnu Kumar @ Prashant Raghav and Lakshman Raghav @ Kaka have been nominated as named accused along with 2 other unknown persons.

6. On the basis of aforementioned written report dated 14.05.2022, an FIR dated 15.05.2022 came to be registered as Case Crime No. 202 of 2022, under Sections 342, 302, 376D, Police Station-Atrouli, District-Aligarh. In the aforesaid FIR, 2 persons namely Kukku @ Abhimanu Raghav, Kaka @ Lakshman i.e. applicant herein have been nominated as named accused whereas an unknown person has also been arraigned as an accused.

7. The gravamen of the allegations made in the FIR to the effect that as per the disclosure made by Abhay, minor son of the first informant. Named accused along with others are guilty of committing rape upon the daughter of the first informant and thereafter having cause the murder of the victim.

8. It is apposite to mention here that after submission of the first written report dated 13.05.2022, the inquest (Panchayatnama) of the deceased was conducted on 13.05.2022 itself. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of the deceased was characterized as suicidal. Thereafter, post mortem of the body of deceased was conducted. The Autopsy Surgeon, who conducted the autopsy of the body of deceased, opined that the cause of death of the deceased was Asphyxia as a result of anti-mortem hanging. However, the Autopsy Surgeon found following anti-mortem injuries on the body of the deceased:-

"(1) Ligature mark 18.0 cm x 1.0 cm around the neck passing below chin and above thyroid about 3.0 cm below (Rt.) Ear, 5.0 cm below left ear and 5.0 cm below chin @ a gap of about 10.0 cm over back.

On cut skin underneath is white/swelling and parchment like.

(2) Vulva swollen hence (2) two vaginal smear and one vaginal swab taken. Labelled extend and handed over to c.p. concerned for the detection of seenhotozax of F.S.L. Agra."

9. Certain samples were also taken from the body of the deceased for pathological examination. However, the supplementary medico legal report of the prosecutrix has not been brought on record. During course of investigation, Investigating Officer examined the first informant and other witnesses including Abhay, the minor son of the first informant. As per the statement of Abhay, the minor son of the first informant and brother of the deceased, he is an eye witness of the occurrence. He has detailed the manner of the occurrence. His statement is on record at page 65/66 of the paper book. Subsequently, the statement of Abhay was recorded under Section 164 Cr.P.C. which is on record at page 79 of the paper book wherein he has rejoined his earlier statement recorded under Section 161 Cr.P.C. On the basis of above and other material collected by the Investigating Officer, he came to the conclusion that complicity of named accused i.e. applicants herein as well as Sarthak and Ashwini is established in the crime in question. He, accordingly, submitted the charge sheet dated 10.08.2022 whereby the following persons have been charge sheeted under Sections 147, 342, 302, 376D IPC:-

(i) Kakku @ Abhimanu Raghav,

(ii) Kaka @ Lakshman,

(iii) Vishnu Kumar,

(iv) Ashwani

10. Learned counsel for applicants contends that applicants are innocent. They have been falsely implicated in aforementioned case crime number. There is an inherent fallacy in the prosecution case inasmuch as, in the first written report dated 13.05.2022, the prosecution has not alleged the complicity of applicants in the crime in question. The prosecution came up with a case that the daughter of the first informant had committed suicide by hanging herself. It is thereafter that the second written report dated 14.05.2022 was submitted by the first informant (father of the deceased) wherein a new case has been set up alleging the complicity of the applicants in the crime in question. He, therefore, contends that since the prosecution itself is not clear and consistent with regard to the prosecution story which it wants to prove against the applicants, the applicants are liable to be enlarged on bail.

11. It is next contended that one of the named and charge sheeted accused namely Sarthak Kumar has already been enlarged on bail by this Court vide order 05.04.2023 passed in Criminal Misc. Bail Application No. 12333 of 2023 (Sarthak Kumar Vs. State of U.P.). For ready reference, the same is re-produced hereinunder:-

"1. List has been revised.

2. Heard Sri Rajeev Kumar Rai, learned counsel for the applicant as well as Sri G.S. Chauhan, learned counsel for the informant and Sri Vibhav Anand Singh, learned AGA for the State and perused the material placed on record.

3. The instant bail application has been filed u/s 439 of Cr.P.C. on behalf of the applicant with a prayer to release him on bail in Case Crime No. 202 of 2022, under Sections 147, 342, 302, 376D of IPC, Police Station Atrauli, District Aligarh, during the pendency of trial.

4. As per prosecution story, the daughter of the informant is stated to have committed suicide in the morning of 13.05.2022 and, as such, the matter was reported to the police station on the same day. The inquest proceedings of the deceased have been conducted on the same day and in the autopsy report, cause of her death was found to be ante mortem hanging. The doctor conducting autopsy has also observed the vulva of the deceased swollen. The FIR was lodged by the informant on 15.05.2022 whereby he had named the accused persons, Kukku @ Abhimanyu Raghav, Kaka @ Laxman and two unknown persons to have committed rape with deceased person and put her to death in the night of 12/13.05.2022 between 03:00 to 04:00 AM.

5. It is submitted by the learned counsel for the applicant that he has been falsely implicated in the present case. The FIR which was lodged after much deliberations and consultations mentions the name of four persons to be the perpetrator of crime in which two are named and two are unknown persons. Learned counsel has further stated that the informant had even filed an affidavit and reiterated the said allegations against the four persons having caused the alleged offence during his statement recorded by the Investigating Officer. During investigation, the Investigating Officer was pleased to transform the case u/s 306 IPC. It has come up in the statements of other witnesses also that the persons, who had committed the said offence, were Kaka, Kukku, Ashwani and Vishnu. Learned counsel has further stated that the name of the applicant has come up on the basis of suspicion only when the CDR of the mobile number of the victim i.e. 7453091897 was taken up by the Investigating Officer and it was found that she had called the main accused persons Kukku @ Abhimanyu Raghav 82 times and the applicant 14 times. Subsequent to the CDR report, the statement of brother of the deceased person Abhay Chauhan was recorded by the I.O. at a belated stage on 29.05.2022 whereby the name of the applicant has been introduced. Thus, the assailants are stated to have been increased to 5 in number from 4. Learned counsel has further stated that the brother of the deceased Abhay Chauhan has even reiterated the said allegations in the statement recorded before the Magistrate u/s 164 Cr.P.C. on 04.06.2022.

6. Learned counsel for the applicant has further stated that the informant and other persons of the village have filed affidavits before the police whereby they have stated that the assailants were four in number and they have not nominated the applicant in them. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused

have also been touched upon at length. The case of the applicant is at a different footing to the case of other four named co-accused persons. The applicant is languishing in jail since 11.09.2022 having no criminal history to his credit, deserves to be released on bail. In case, the applicant is released on bail, he will not misuse the liberty of bail and shall cooperate with the trial.

7. Per contra, learned counsel for the informant as well as learned A.G.A. have vehemently opposed the bail prayer of the applicant on the ground that the star witness is Abhay Chauhan who had seen the accused persons as he was present there and was locked inside by the accused persons and he being the star witness has nominated the applicant as one of the accused person. Although, they could not dispute the fact that the statement of the said witness has been recorded after a delay of about 16 days to the offence.

8. Considering the facts and circumstances of the case, submissions advanced by learned counsel for the parties, nature of offence, evidence on record, stage of trial, complicity of accused, severity of punishment and also considering the fact that the FIR was lodged after a delay of two days and it mentions the assailants to be four in number and later on, the names of two unknown persons have come up and the applicant is not named in it, I find it a fit case for releasing the applicant on bail.

9. Without expressing any opinion on the merits, the bail application is allowed. Let the applicant Sarthak Kumar involved in aforesaid crime 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 that :-

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

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

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

12. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses. "

12. Even otherwise, applicants are men of clean antecedents inasmuch as, they have no criminal history to their credit except the present one. Applicants are in jail since 31.05.2022. As such, they have undergone more than 1 year and 2 months of incarceration. The police report in terms of Section 173(2) has already been submitted, therefore, the entire evidence

sought to be relied upon by the prosecution against applicants stands crystallized. Up to this stage, no such circumstance has emerged against applicants necessitating the custodial arrest of applicants during the pendency of trial. He, therefore, contends that no useful purpose shall be served in prolonging the custodial arrest of applicants. On the cumulative strength of above, it is thus urged that applicants are liable to be enlarged on bail. In case, the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

13. *Per contra*, the learned A.G.A. for State and Mr. G.S. Chauhan, the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicants are named as well as charge sheeted accused, therefore, they do not deserve any indulgence by this Court. The crime committed by the applicants is not private in nature but a crime against society.

14. Mr. G.S. Chauhan, the learned counsel representing first informant has then invited the attention of Court to the order dated 10.05.2023 passed by this Court in Criminal Misc. Bail Application No. 43327 of 2022 (Ashwani Vs. State of U.P.) whereby the bail application of not named but charge sheeted accused Ashwani has been rejected. For ready reference, the order dated 10.05.2023 is reproduced hereinunder:-

"1. Heard Sri Kamal Krishna, learned Senior Advocate, assisted by Sri Mohd. Afzal, learned counsel for the applicant, learned counsel for the informant, Sri Rajneesh Sharma, learned A.G.A. for the State and perused the material brought on record.

2. The present bail application has been filed by the applicant in case crime No. 202/2022, under Sections 376-D, 302, 147, 342 IPC, police station Atrauli, District Aligarh with the prayer to enlarge the applicant on bail.

3. According to prosecution version, on 13.05.2022 at around 03:00-04:00 AM while informant and his wife were not at the home, co-accused Kukku @ Abhimanyu Raghav and Kaka @ Laxman, along with two unknown persons, came at the house of informant and extending threats they took his daughter into a room and ravished her. They have also threatened the son of informant, who was present there. The daughter of informant has threatened that she would tell the incident to her family members and thereafter the said accused persons hanged her. It appears that during investigation, on the basis of postmortem report, it was found that deceased has died due to asphyxia as a result of ante-mortem hanging and thus, the case was converted from Section 302 IPC to Section 306 IPC.

4. It has been argued by learned senior counsel for the applicant that the applicant-accused is innocent and he has been falsely implicated in this case. It was submitted that applicant is not named in the first information report, which was lodged against co-accused Kukku @ Abhimanyu Raghav, Kaka @ Laxman and one unknown person. The record of call details of the deceased was collected but no call was found to be of applicant with deceased. The deceased has committed suicide and after that a false story has been concocted. The prosecution version regarding rape of victim is not supported by postmortem report. Learned senior counsel submitted that

alleged incident has been shown of 13.05.2022 and after that informant has given an information to the police stating that his daughter has committed suicide but at that time no allegation regarding rape of victim was made nor any accused was named therein and after two days of the incident, first information report was lodged on 15.05.2022 with deliberations. Even as per the statement of witness Surendra Singh Chauhan, the deceased was having an affair with co-accused Kukku @ Abhimanyu Raghav and regarding applicant and co-accused, it was submitted that they used to harass the victim girl. Learned senior counsel has referred the statement of Abhay Chauhan, who is brother of deceased, and submitted that the allegations made by the said witness are thoroughly false and improbable. It was further submitted that co-accused Sarthak Kumar has already been granted bail by co-ordinate Bench of this Court, copy of which, is available on record. It was also submitted that witness Mahi Chauhan, who is sister of deceased, has not named the applicant. Lastly, it was submitted that the applicant is a student and he is in judicial custody since 01.07.2022, having no criminal history, and that in case, applicant is enlarged on bail, the applicant will not misuse the liberty of bail.

5. On the other hand, learned A.G.A. and learned counsel for the informant have opposed the prayer for bail and argued that eye witness Abhay Chauhan has clearly stated that applicant was involved in the incident. Referring to the statement of Abhay Chauhan, recorded under Section 164 Cr.P.C., it was submitted that he has categorically named the applicant and co-accused Kaka, Kukku and Vishnu and he has stated that while co-accused Kaka, Kukku and Vishnu were dragging the deceased into another room and he tried to intervene, co-accused Kaka, Kukku and applicant have closed him into a room and applicant has threatened that if he disclosed the incident to anyone, he would kill his brothers and sisters. They took the deceased into a room while deceased kept crying and after sometime they came out from the said room and deceased told that she has been ravished by them. It was submitted that the version that deceased was ravished by applicant is supported by FSL report, wherein, human blood has been found on t-shirt and trouser of deceased and sperms were also found in vaginal swab, vaginal slide and on undergarments of deceased. It was further submitted that in his statement, recorded under Section 164 Cr.P.C., eye witness Abhay Chauhan has not named co-accused Sarthak Kumar and that bail of co-accused Sarthak Kumar was allowed on the ground that initially the prosecution version was that only four accused persons were involved in the incident. It was also submitted that facts and evidence clearly show that on the day of incident at wee hours applicant and co-accused persons came at the house of deceased and they forcibly dragged her into a room and threatened her minor brothers and sisters and closed them into a room and they ravished the deceased and after the incident, deceased committed suicide.

6. After considering submissions of learned counsel for the parties, nature of accusations, gravity of the offence, severity of punishment and all attending facts and circumstances of the case, no case for grant of bail is made out.

7. Accordingly, the instant bail application filed on behalf of applicant Ashwani is rejected."

15. Much emphasis was laid on the recital contained in paragraph 3 of the said order and on basis thereof, he submits that supplementary medico legal report clearly supports the prosecution case that the modesty of the victim was dislodged.

16. According to the learned A.G.A, the complicity of the applicants in the crime in question is fully substantiated in the statements of Abhay, minor brother of the deceased whose statements were recorded under Section 161 Cr.P.C. followed by his subsequent statement under Section 164 Cr.P.C. In both the statements, this witness has remained clear, consistent and categorical, therefore, his testimony is not liable to be discarded on the ground of contradiction or inconsistency. Learned A.G.A. has then referred to the statement of another witness Mahi Chauhan, which is on record at page 69B of the paper book pertaining to the applicant Lakshman Raghav @ Kaka. This witness is a minor girl aged about 10 years and she has also supported the prosecution story which the prosecution has set out to prove. On the above premise, the learned A.G.A. contends that irrespective of the fact that the applicants are men of clean antecedents having no criminal history to their credit, the period of incarceration undergone coupled with the fact that the police report has been submitted against applicant yet they are not liable to be enlarged on bail. The crime committed by the applicants is not private in nature but a crime against society. Applicants are guilty of dislodging the modesty of the prosecutrix who was a young girl. It is thus urged that no sympathy be shown by this Court in favour of applicants.

17. Having heard, the learned counsel for applicants, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, complicity of applicants, accusations made coupled with the fact that the complicity of the applicants in the crime in question is clearly supported by the supplementary medico legal report which has been dealt with at page 3 of the order dated 10.05.2023 referred to above, the deceased was a young girl aged about 20 years, no explanation has been offered to doubt the credibility or reliability of the two witnesses namely Abhay and Mahi Chauhan, nothing has emerged on the record on the basis of which, it can be inferred that the prosecution of the applicants is malicious or false, the nature of the crime not being private in nature but a crime against society, therefore, irrespective of the fact that the applicants are men of clean antecedents inasmuch as, they have no criminal history to their credit except the present one, the period of incarceration undergone and also the fact that the charge sheet has been submitted and the entire evidence sought to be relied upon by the prosecution against applicants stands crystallized but without making any comments on the merits of the case, this Court does not find any good ground to enlarge the applicants on bail.

17. In view of above, the present applications for bail fail and are liable to be rejected.

18. They are accordingly rejected.

Order Date :- 4.8.2023 "

5. Learned counsel for applicant contends that though the applicant is a charge sheeted accused and facing trial before court below by way of aforementioned Sessions Trial yet in view of the facts as have now emerged on record, applicant is liable to be enlarged on bail during the pendency of trial. To buttress his submission, the learned counsel for applicant submits that co-accused Ashwani has already been enlarged on bail vide order dated 03.12.2024 passed by this Court in Criminal Misc. Bail Application NO.34819 of 2024 (Ashwani Vs. State of U.P.). For ready reference the order dated 03.12.2024 is reproduced herein-below:

"1. Heard Sri Kamal Krishna, learned Senior Advocate, assisted by Sri Pradeep Kumar Rai, learned counsel for the applicant, learned counsel for the informant, learned A.G.A. for the State and perused the material brought on record.

2. The present third bail application has been filed on behalf of the applicant in Case Crime No. 202 of 2022, under Sections -376-D, 302, 342, 147 I.P.C., Police Station - Atrauli, District - Aligarh with the prayer to enlarge the applicant on bail. The first and second bail application of applicant were rejected by this Court vide orders dated 10.05.2023 and 11.07.2024.

3. According to prosecution version, on 13.05.2022 at around 03:00-04:00 AM, while informant and his wife were not at the home, co-accused Kukku @ Abhimanyu Raghav and Kaka @ Laxman, along with two unknown persons, came at the house of informant and extending threats, they took his daughter into a room and ravished her. They have threatened the son of informant, who was present there. When the daughter of informant has threatened that she would tell the incident to her family members, the said accused persons committed her murder by hanging. It appears that during investigation, on the basis of postmortem report, it was found that deceased has died due to asphyxia as a result of ante-mortem hanging. During investigation, it was found that applicant/accused Ashwani was also involved in the incident.

4. *Learned Senior Advocate appearing for applicant-accused submitted that applicant-accused is resident of the same village but he was not named in the first information report. The F.I.R. was lodged against co-accused Kukku @ Abhimanyu Raghav, Kaka @ Laxman and two unknown persons. The involvement of applicant and co-accused Sarthak Kumar was shown during investigation through statement of witness Abhay Chauhan @ Arpit, which was recorded on a belated stage. Further, as per postmortem report of deceased hyoid bone of deceased has been shown intact and cause of death of deceased is asphyxia due to ante-mortem hanging and thus, it is clear that deceased has committed suicide and no case under Section ? 302 I.P.C. is made out.*

5. *It is further submitted that second bail application of applicant was rejected by this Court vide order dated 11.07.2024 and it was observed that after statement of alleged eye witness Abhay Chauhan @ Arpit is recorded before the trial court, the applicant would be at liberty to file a fresh bail application. Now, the statement of said witness Abhay Singh @ Arpit has been recorded before the trial court. Learned Senior Counsel has referred statement of said witness as recorded before the trial court and pointed out that in his cross examination, he has stated that when his father has gone to lodge the report he has also gone with his father but applicant-accused was not named. In his cross examination said witness has admitted that accused persons are residents of his village and he knows them well. Referring to facts of the matter and statement of P.W.-2, it was submitted that if the applicant-accused might have been involved in the incident, he must have been named in the first information report. It was further submitted that material witnesses have already been examined and thus, there is no possibility of tampering with evidence. Further, similarly placed co-accused Sarthak Kumar has already been granted bail by the co-ordinate Bench of this Court vide order dated 05.04.2023, passed in Criminal Misc. Bail Application No. 12333 of 2023. Lastly, it was submitted that applicant is languishing in jail since 01.07.2022, having no criminal history, and that trial of the case would take sufficient long time.*

6. *Learned A.G.A. and learned counsel for informant have opposed the prayer of bail and submitted that P.W.-2 Abhay Chauhan @ Arpit is eye*

witness of the incident and in his statement before the trial court, he has supported the prosecution version and clearly stated that applicant-accused was involved in the incident. The medical examination report of deceased as well as clothes of deceased clearly indicate that deceased was ravished by the accused persons including applicant. The first and second bail application of applicant-accused have already been rejected and no new substantial ground is made out to entertain this third bail application.

7. I have considered the rival submissions and perused the record.

8. Persual of record shows that applicant is not named in the first information report, which was lodged against co-accused Kukku @ Abhimanyu Raghav, Kaka @ Laxman and two unknown persons and it was alleged that all the four miscreants came at the house of informant and forcibly took the deceased into room and ravished her and the said incident was witnessed by the brother of deceased. Thereafter deceased was hanged by the accused persons. In postmortem report, cause of death of deceased has been shown ante- mortem hanging. It was shown that applicant-accused is resident of same village but he was not named in the F.I.R.. First and second bail application of applicant-accused were rejected but thereafter statement of eye witness Abhay Chauhan @ Arpit has been recorded before the trial court. Co-accused Sarthak Kumar, who was also not named in the first information report, has been granted bail by the co-ordinate Bench of this Court vide order dated 05.04.2023. Though, bail application of co-accused Vishnu Kumar @ Prashant Raghav and Lakshman Raghav @ Kaka has been rejected by the co-ordinate Bench of this Court but both the said co-accused persons were named in the first information report. The applicant is stated in jail since 01.07.2022, having no criminal history.

9. Considering the submissions of learned counsel for the parties, nature of accusations, period of custody and all attending facts and circumstances of the case, without expressing any opinion on the merits, a case for bail is made out. Hence, the present third bail application is hereby allowed.

10. Let the applicant - Ashwani involved in the aforesaid crime be released on bail on furnishing a personal bond and two local sureties each of the

like amount to the satisfaction of court concerned subject to the following conditions:

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

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

(iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The applicant will not try to contact, threat or otherwise influence the complainant or any of the witness of the case.

11. In case of breach of any of the above condition, the court concerned shall be at liberty to cancel the bail of applicant, in accordance with law.

Order Date :- 3.12.2024 "

6. According to the learned counsel for applicant, case of present applicant is similar and identical to that of co-accused Ashwani, who has already been enlarged on bail. There does not exist any such distinguishing feature on the basis of which the case of present applicant could be so distinguished from aforementioned co-accused Ashwani so as to deny him bail. On the above premise, the learned counsel for applicant contends that in view of above and for the facts and reasons recorded in the bail order of co-accused Ashwani, applicant is also liable to be enlarged on bail on the ground of parity.

7. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in custody since 31.05.2022. As such, he has undergone almost three years of incarceration. The police report-charge-sheet in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized.

However, upto this stage, no such incriminating circumstance has emerged on the record necessitating the custodial arrest of applicant during the pendency of trial. The trial of applicant has already commenced before court below. Upto this stage, two prosecution witnesses namely P.W.-1, first informant, Anup Kumar and P.W.-2, Abhay @ Abhi Chauhan (eye witness) have deposed before court below. On the above premise, the learned counsel for applicant submits that once the statements of the first informant and eye witness have already been recorded then in that eventuality it cannot be said that if the applicant is enlarged on bail, he shall either terrorize the witnesses or shall hamper the course of trial. He therefore contends that no justifiable ground now exists to prolong the custodial arrest of applicant. On the above premise, it is thus urged that applicant is liable to be enlarged on bail during the pendency of aforementioned Sessions Trial. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

8. Per contra, the learned A.G.A. for State-opposite party-1 has vehemently opposed the present repeat application for bail. He submits that since applicant is a charge sheeted accused and also facing trial before court below, therefore, he does not deserve any indulgence by this Court. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

9. Having heard the learned counsel for applicant, the learned A.G.A. for State-opposite party-1, upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant and coupled with the fact though applicant is a charge sheeted accused and facing trial

before court below, the first bail application of applicant was rejected by this Court vide order dated 04.08.2023, however this court finds that subsequent to above order dated 04.08.2023, co-accused Ashwani has already been enlarged on bail by this Court vide order dated 03.12.2024, the case of present applicant is similar and identical to that of co-accused Ashwani, learned A.G.A. could not point out any such distinguishing feature in the case of present applicant so as to distinguish the case of present applicant from bailed out co-accused Ashwani so as to deny him bail, in view of above and for the facts and reasons recorded in the bail order of co-accused Ashwani, the applicant is liable to be enlarged on bail on the ground of parity, the police report/charge sheet in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet in spite of above, no such incriminating circumstance could be pointed out by learned the A.G.A. from the record necessitating the custodial arrest of applicant during the pendency of trial, upto this stage the statement of two prosecution witnesses namely P.W.-1, first informant, Anup Kumar and P.W.-2, Abhay @ Abhi Chauhan (eye witness) have already been recorded before court below, in view of above, in case applicant is enlarged on bail then in that eventuality it cannot be said that if the applicant is enlarged on bail, he shall either terrorize the witnesses or shall hamper the course of trial, no good reason could be assigned by the learned A.G.A. necessitating the custodial arrest of applicant, applicant is liable to be enlarged on bail in view of the law laid down by Apex Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 6), the clean antecedents of applicant, the period of incarceration

undergone, therefore irrespective of the objections raised by learned A.G.A. in opposition to present repeat application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

10. Accordingly, present repeat application for bail is **allowed**.

11. Let the applicant-**Vishnu Kumar Alias Prashant Raghav** involved in aforesaid case crime number 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) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

12. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison.

Order Date :- 30.5.2025

YK