

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8049 of 2025

Applicant :- Joni

Opposite Party :- State of U.P.

Counsel for Applicant :- Praveen Kumar Tiwari, Sanjay Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

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

2. Perused the record.

3. This third application for bail has been filed by applicant-Joni seeking his enlargement on bail in Case Crime No. 0027 of 2023 under Sections 302, 120B, 201 I.P.C. and Sections 3/25/27 Arms Act, Police Station-Saroorpur, District-Meerut, during the pendency of trial i.e. Sessions Case No. 559 of 2023 (State Vs. Joni) under Sections 302, 201, 202, 120B I.P.C. and Sections 3/25/27 Arms Act, Police Station-Saroorpur, District-Meerut, now pending in the Court of Sessions Judge, Meerut.

4. The first bail application of applicant was rejected by this Court by a detailed order dated 24.11.2024 passed in Criminal Misc. Bail Application No. 42529 of 2023 (Joni Vs. State of U.P.). Thereafter, applicant filed his repeat application for bail, which was registered as Criminal Misc. Bail Application No. 21271 of 2024 (Joni Vs. State of U.P.). The aforesaid repeat application for bail filed by applicant also came to be rejected vide order dated 30.05.2024. For ready reference, the order dated 30.05.2024 is reproduced herein-

under:

"Heard Mr. Avnish Kumar Srivastava, the learned counsel for applicant and the learned A.G.A. for State.

This repeat application for bail has been filed by applicant Joni seeking his enlargement on bail in Case Crime No.0027 of 2023, under Sections 302, 120-B, 201, 202 IPC and Section 3/25/27 Arms Act, police station Saroorpur, district Merut, during the pendency of trial i.e. Sessions Trial No.559 of 2023 (State Vs. Joni and three others), under Sections 302, 120-B, 201, 202 IPC and Section 3/25/27 Arms Act, police station Saroorpur, district Merut, now pending in the Court of Sessions Judge, Meerut.

Perused the record.

The first bail application of applicant was rejected by this Court by a detailed order dated 24.11.2023 passed in Criminal Misc. Bail Application No.42529 of 2023 (Joni Vs. State of U.P.). For ready reference, the order dated 24.11.2023 is reproduced herein-below :

"Heard Mr. Akash Tyagi, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant-Joni seeking his enlargement on bail in Case Crime No. 27 of 2023, under Sections 302, 120-B, 201, 202 IPC and Section 3/25/27 Arms Act, Police Station-Saroorpur, District-Meerut during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 02.02.2023, a delayed first information report dated 04.02.2023 was lodged by the first informant, namely, Rajpal (uncle of the deceased) and was registered as Case Crime No.0027 of 2023, under Section 302 IPC, Police Station-Saroorpur, District-Meerut. In the aforesaid first information report, two persons, namely, Joni and Preeti have been nominated as named accused, whereas some unknown persons have also been arraigned as accused.

Learned counsel for applicant submits that since the charge-sheet has been submitted against named co-accused Preeti and Joni (applicant herein) and not named co-accused Banti and Sandeep and out of which three of the charge-sheeted accused have already been enlarged on bail therefore, the present applicant is also liable to be enlarged on bail on the ground of parity.

At the very outset, the learned A.G.A. contends that named accused Preeti has already been enlarged on bail by this Court vide order dated 26.07.2023 passed in Criminal Misc. Bail Application No.26062 of 2023 (Preeti Vs. State of U.P.). For Ready reference, the same is reproduced herein-under :-

"1. Heard Mr. Sudhir Kumar, the learned counsel for applicant, the learned

A.G.A. for State and Mr. Ashish Singh, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Preeti seeking her enlargement on bail in Case Crime No. 27 of 2023, under Sections 302, 201, 120B IPC, Police Station-Saroorpur, District-Meerut during the pendency of trial.

4. It transpires from record that one Sandeep went missing from 02.02.2023. Thereafter, a missing person's report dated 03.02.2023 was lodged by Rajpal (uncle of the missing person). After the aforementioned missing person report was lodged, the police of police station concerned collected the call details of the deceased. On the basis of above, the complicity of 2 persons namely Sandeep and Jony came to surface. Accordingly, Jony was questioned by police. At the time of his interrogation, he is alleged to have made his confessional statement regarding the commission of crime in question. Subsequently, on his pointing out, the motorcycle that was used in the commission of the crime bearing Registration No. U.P. 15 CH 1913 (Splendor Plus) was recovered. The complicity of another co-accused namely Sandeep was also alleged. As such, this accused was also arrested.

5. Subsequently, on the pointing of Jony, the dead body of the deceased was recovered by the police. Ultimately, the weapon of assault i.e. country made gun was also recovered on the pointing out of co-accused Sandeep on 02.03.2023. After aforesaid recoveries had been made, the statement? of the named accused Jony was recorded under Section 161 Cr.P.C. This accused in his confessional statement has taken the name of the present applicant and simply on the basis of above, Investigating Officer? came to the conclusion that as per above and also the call detail report of the deceased, the complicity of present applicant is also established in the crime in question. In the submission of the learned counsel for applicant except for the above, there is no evidence against applicant in the entire material collected by the Investigating Officer.

6. It is further submitted that after completion of investigation of concerned case crime number, Investigating Officer has submitted the charge sheet dated 30.04.2023 whereby 2 of the named accused Jony and Priti and not named accused Sandeep and Banti have been charge sheeted under Sections? 302, 201, 202, 120B IPC and Sections 3/25 and 27 Arms Act.

7. At the very outset, the learned counsel for applicant contends that though applicant is named and charge sheeted accused yet she is liable to be enlarged on bail. Applicant is the widow of deceased (Sandeep). The only evidence that has emerged against applicant in the crime in question is the confessional statement of co-accused Jony and the call detail report that goes to show that applicant had telephonic conversation with Jony.

However, no recovery has been made from the applicant. All the recoveries pertaining to the crime in question were made from co-accused Jony and Sandeep. As such, the case of present applicant is clearly distinguishable from co-accused Jony and Sandeep and therefore, she is liable to be enlarged on bail. Even otherwise, applicant being a lady is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C.

8. It is lastly contended that co-accused Sandeep has already been enlarged on bail by this Court vide order dated 18.07.2023 passed in Criminal Misc. Bail Application No. 31259 of 2023 (Sandeep Vs. State of U.P.). For ready reference, the same is re-produced hereinunder:-

"वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र आवेदक संदीप की ओर से मु०अ०स० 27/2023, अन्तर्गत धारा 302, 201, 120 बी भा०दं०वि०, थाना सररपुर, जिला मेरठ में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

आवेदक के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि आवेदक को इस प्रकरण में गलत एवं फर्जी ढंग से झूठा फंसाया गया है, उसने कथित अपराध कारित नहीं किया है। आवेदक द्वारा सहअभियुक्तगण के साथ मिलकर मृतक की हत्या नहीं की गयी है और न ही कोई षडयंत्र बनाया गया है। आवेदक द्वारा कथित घटना कारित करने का कोई हेतुक नहीं है। तथाकथित घटना कोई प्रत्यक्षदर्शी साक्षी नहीं है। मामले में वास्तविक तथ्य यह है कि मृतक की पत्नी प्रीती का मृतक के ही भांजे (जोनी) से अवैध संबंध हो गया था, इसकी जानकारी मृतक को हो गयी थी तथा वह इसका विरोध करने लगा। तब मृतक की पत्नी व मृतक का भांजा (जोनी) सुनियोजित तरीके से योजना बनाकर, मृतक को जंगल में बुलाकर सहअभियुक्त जोनी द्वारा उसकी गोली मारकर हत्या कर दी गयी। जिससे स्पष्ट है कि मामले के सहअभियुक्तगण जोनी व प्रीती द्वारा अपने अवैध संबंधों में बाधा बन रहे मृतक की सुनियोजित तरीके से हत्या की गयी। आवेदक की कथित अपराध में कोई भूमिका दर्शित नहीं है, तथाकथित घटना मुख्य रूप से सहअभियुक्तगण जोनी व प्रीती द्वारा कारित किया जाना परिलक्षित है। आवेदक निर्दोष है तथा वह इस प्रकरण में दि० 02.03.2023 से कारागार में निरुद्ध है। इसलिए आवेदक को जमानत पर छोड़ दिया जाय।

विद्वान अपर शासकीय अधिवक्ता ने आवेदक के जमानत का प्रबल विरोध करते हुए तर्क प्रस्तुत किया कि आवेदक द्वारा कारित अपराध संज्ञेय एवं गंभीर प्रकृति का है, इसलिए आवेदक को जमानत पर न छोड़ा जाय।

आवेदक के विद्वान अधिवक्ता के तर्कों के परिप्रेक्ष्य में पत्रावली पर उपलब्ध सारवान तथ्यों एवं परिस्थितियों का समग्र रूप से अवलोकन करने के बाद, सबूतों की प्रकृति और किसी भी ठोस विरोधात्मक सामग्री की अनुपस्थिति एवं उपलब्ध सामग्री से छेड़छाड़ की संभावना न होने के तथ्य को देखते हुए मेरी

राय में आवेदक को जमानत पर मुक्त करने का उपयुक्त आधार है।

अतः वाद के गुण-दोष पर बिना कोई टिप्पणी किए हुए आवेदक को उपरोक्त वर्णित अपराध में संबंधित न्यायालय की संतुष्टि पर व्यक्तिगत बंध-पत्र एवं अधिक धनराशि के दो स्थानीय प्रतिभू प्रस्तुत करने पर निम्नलिखित शर्तों के साथ जमानत पर छोड़ दिया जाय।

1. आवेदक विवेचना या परीक्षण के दौरान अभियोजन साक्ष्यों के साथ छेड़छाड़ नहीं करेगा।

2. आवेदक अभियोजन साक्षियों व पीड़िता/ शिकायतकर्ता को डरायेगा/धमकायेगा नहीं।

3. आवेदक न्यायालय के आदेशों का पालन करेगा, वह परीक्षण के दौरान बिना कोई अनावश्यक स्थगन लिए नियत तिथि पर न्यायालय में उपस्थित होगा तथा परीक्षण में ईमानदारी से सहयोग करेगा।

4. आवेदक जमानत पर रिहा होने के बाद जमानत की स्वतंत्रता का दुरुपयोग नहीं करेगा और किसी भी अपराधिक गतिविधि में लिप्त नहीं होगा न कोई अपराधिक कृत्य करेगा।

5. आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से मामले के तथ्यों से परिचित किसी भी व्यक्ति या पुलिस अधिकारियों को कोई प्रलोभन या धमकी नहीं देगा न ही उनसे कोई वायदा करेगा, जिसके कारण उन्हें न्यायालय में तथ्यों को उजागर करने से विरत रहना पड़े।

उपरोक्त शर्तों में से किसी के उल्लंघन के मामले में, परीक्षण न्यायालय आवेदक की जमानत नियमानुसार रद्द करने को स्वतंत्र है।"

9. Even otherwise, applicant is a woman of clean antecedents inasmuch as, she has no criminal history to her credit except the present one. Applicant is in jail since 05.02.2023. As such, she has undergone more than 6 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, there is no such incriminating circumstance necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged that applicant is liable to be enlarged on bail. In case, applicant is enlarged on bail, she shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that mens rea to commit the murder of the deceased is duly established against applicant from the record. The applicant is the wife of the deceased. However, irrespective of above, she maintained extra marital relation with co-accused Jony and therefore, the crime was committed. They, therefore,

submit that no indulgence be shown by this Court in favour of applicant. Even otherwise, applicant is a named as well as charge sheeted accused. Up to this stage, there is nothing on record to infer the innocence of the applicant. They, therefore, contend that no sympathy be shown by this Court in favour of applicant.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, Mr. Ashish Singh, the learned counsel representing first informant and upon perusal of record, evidence, nature and gravity of offence, complicity of applicant and accusations made coupled with the fact that co-accused Sandeep has already been enlarged on bail by this Court, the learned A.G.A. as well as the learned counsel representing first informant could not point out any such distinguishing feature to distinguish the case of present applicant from bailed out co-accused Sandeep so as to deny him bail, the police report in terms of Section 173(2) Cr.P.C. has already been submitted, as such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, the only evidence that has emerged against applicant is the confessional statement of co-accused Jony and the call detail report of the applicant, the recovery of the motorcycle used in the commission of crime as well as the dead body of the deceased has been made on the pointing out of co-accused Jony, the recovery of weapon of assault has been made from the co-accused Sandeep, present case is a case of circumstantial evidence, however, neither there is any evidence of last seen, nor any recovery has been made from applicant, applicant is a woman of clean antecedents inasmuch as, she has no criminal history to her credit except the present one, applicant is in jail since 05.02.2023, as such, she has undergone more than 6 months of incarceration, applicant being a lady is entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C., but without making any comment on the merits of the case, applicant has made out a case for bail.

12. Accordingly, the bail application is allowed.

13. Let the applicant-Preeti be released on bail in aforesaid case crime number on her furnishing a personal bond and two heavy 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 SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIM/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) 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 THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

14. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on her bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above."

Learned A.G.A. further contends that another not named co-accused Sandeep has also been enlarged on bail by this Court vide order dated 18.07.2023 passed in Criminal Misc. Bail Application No.31259 of 2023 (Sandeep Vs. State of U.P.). For ready reference, the same is reproduced herein-under :-

"वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र आवेदक संदीप की ओर से मु०अ०स० 27/2023, अन्तर्गत धारा 302, 201, 120 बी भा०दं०वि०, थाना सररपुर, जिला मेरठ में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

आवेदक के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि आवेदक को इस प्रकरण में गलत एवं फर्जी ढंग से झूठा फंसाया गया है, उसने कथित अपराध कारित नहीं किया है। आवेदक द्वारा सहअभियुक्ता के साथ मिलकर मृतक की हत्या

नहीं की गयी है और न ही कोई षडयंत्र बनाया गया है। आवेदक द्वारा कथित घटना कारित करने का कोई हेतुक नहीं है। तथाकथित घटना कोई प्रत्यक्षदर्शी साक्षी नहीं है। मामले में वास्तविक तथ्य यह है कि मृतक की पत्नी प्रीती का मृतक के ही भांजे (जोनी) से अवैध संबंध हो गया था, इसकी जानकारी मृतक को हो गयी थी तथा वह इसका विरोध करने लगा। तब मृतक की पत्नी व मृतक का भांजा (जोनी) सुनियोजित तरीके से योजना बनाकर, मृतक को जंगल में बुलाकर सहअभियुक्त जोनी द्वारा उसकी गोली मारकर हत्या कर दी गयी। जिससे स्पष्ट है कि मामले के सहअभियुक्तगण जोनी व प्रीती द्वारा अपने अवैध संबंधों में बाधा बन रहे मृतक की सुनियोजित तरीके से हत्या की गयी। आवेदक की कथित अपराध में कोई भूमिका दर्शित नहीं है, तथाकथित घटना मुख्य रूप से सहअभियुक्तगण जोनी व प्रीती द्वारा कारित किया जाना परिलक्षित है। आवेदक निर्दोष है तथा वह इस प्रकरण में दि० **02.03.2023** से कारागार में निरुद्ध है। इसलिए आवेदक को जमानत पर छोड़ दिया जाय।

विद्वान अपर शासकीय अधिवक्ता ने आवेदक के जमानत का प्रबल विरोध करते हुए तर्क प्रस्तुत किया कि आवेदक द्वारा कारित अपराध संज्ञेय एवं गंभीर प्रकृति का है, इसलिए आवेदक को जमानत पर न छोड़ा जाय।

आवेदक के विद्वान अधिवक्ता के तर्कों के परिप्रेक्ष्य में पत्रावली पर उपलब्ध सारवान तथ्यों एवं परिस्थितियों का समग्र रूप से अवलोकन करने के बाद, सबूतों की प्रकृति और किसी भी ठोस विरोधात्मक सामग्री की अनुपस्थिति एवं उपलब्ध सामग्री से छेड़छाड़ की संभावना न होने के तथ्य को देखते हुए मेरी राय में आवेदक को जमानत पर मुक्त करने का उपयुक्त आधार है।

अतः वाद के गुण-दोष पर बिना कोई टिप्पणी किए हुए आवेदक को उपरोक्त वर्णित अपराध में संबंधित न्यायालय की संतुष्टि पर व्यक्तिगत बंध-पत्र एवं अधिक धनराशि के दो स्थानीय प्रतिभू प्रस्तुत करने पर निम्नलिखित शर्तों के साथ जमानत पर छोड़ दिया जाय।

1. आवेदक विवेचना या परीक्षण के दौरान अभियोजन साक्ष्यों के साथ छेड़छाड़ नहीं करेगा।
2. आवेदक अभियोजन साक्षियों व पीड़िता/ शिकायतकर्ता को डरायेगा/धमकायेगा नहीं।
3. आवेदक न्यायालय के आदेशों का पालन करेगा, वह परीक्षण के दौरान बिना कोई अनावश्यक स्थगन लिए नियत तिथि पर न्यायालय में उपस्थित होगा तथा परीक्षण में ईमानदारी से सहयोग करेगा।
4. आवेदक जमानत पर रिहा होने के बाद जमानत की स्वतंत्रता का दुरुपयोग नहीं करेगा और किसी भी अपराधिक गतिविधि में लिप्त नहीं होगा न कोई अपराधिक कृत्य करेगा।
5. आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से मामले के तथ्यों से परिचित किसी भी

व्यक्ति या पुलिस अधिकारियों को कोई प्रलोभन या धमकी नहीं देगा न ही उनसे कोई वायदा करेगा, जिसके कारण उन्हें न्यायालय में तथ्यों को उजागर करने से विरत रहना पड़े।

उपरोक्त शर्तों में से किसी के उल्लंघन के मामले में, परीक्षण न्यायालय आवेदक की जमानत नियमानुसार रद्द करने को स्वतंत्र है। "

Learned A.G.A. with reference to the order dated 26.07.2023 pertaining to named co-accused Preeti submits that this Court while deciding the bail application of co-accused Preeti has categorically observed in paragraph 11 of the order that the recovery of motorcycle used in the commission of crime as well as the dead body of the deceased have been made on the pointing out of present applicant Jony. He, therefore, contends that by reasons of above the complicity of present applicant is fully established in the crime in question. As such, the case of present applicant is distinguishable from other charge-sheeted accused. He, therefore, contends that no sympathy be shown by this Court in favour of applicant. As such, the present application for bail is liable to be rejected.

When confronted with above, the learned counsel for applicant could not overcome the same.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made coupled with the fact that this Court while deciding the bail application of co-accused Preeti has recorded categorical finding against the applicant as is evident from the recital contained in paragraph 11 of the order, which finding could not be dislodged by the learned counsel for applicant as being perverse therefore irrespective of the submissions urged by the learned counsel for applicant in support of the bail application but, without making any comment on the merits of the case, this Court does not find any good ground to enlarge the applicant on bail.

This application for bail thus fails and is liable to be rejected.

It is accordingly rejected."

Learned counsel for the applicant contends that subsequent to the above order dated 24.11.2023, the trial of the applicant commenced before the court below. Upto this stage, only one prosecution witness i.e. PW-1 Rajpal (first informant) has been examined. With reference to the deposition of aforesaid witness he contends that the first informant in his deposition before court below himself could not establish the prosecution story. On the above premise, he contends that applicant is liable to be enlarged on bail.

Even otherwise, the applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 02.03.2023. As such, he has undergone more than one year and two months of incarceration. The applicant is a young body aged about 21

years. The police report in terms of Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. It is thus urged that the applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that PW-1 who has deposed before court below has not yet been declared hostile. He further contends that even though this Court is a superior court, dictates of prudence require that the evidence that has emerged during the course of trial should not be evaluated by this court as any exercise in this regard shall pre-empt the trial, which may affect the prosecution or the defense. He further contends that considering the nature and gravity of offence, the period of incarceration undergone by the applicant itself is by itself not sufficient so as to enlarge the applicant on bail. On the above premise, he therefore contend that no new, good or sufficient ground has been made out to enlarge the applicant on bail.

When confronted with above, the learned counsel for applicant could not overcome the same.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made, coupled with the fact that the objections raised by the learned A.G.A. in opposition to this repeat application for bail could not be dislodged by the learned counsel for applicant with reference to the record therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of this repeat application for bail, this Court does not find any new good or sufficient ground to enlarge the applicant on bail.

As a result, this repeat application for bail fails and is liable to be rejected.

It is, accordingly, rejected.

Order Date :- 30.5.2024."

5. Learned counsel for applicant submits that even though the applicant is a named and charge sheeted accused yet he is liable to be enlarged on bail. Applicant is in jail since 02.03.2023 as such he has undergone more than two years of incarceration. As per charge sheet/police report submitted by the Investigating Officer as many as 32 witnesses are nominated as prosecution witnesses. However, upto this stage only 8 prosecution witnesses have deposed before

court below. On the above premise, it is thus contended by the learned counsel for applicant that there is no likelihood of the trial getting concluded in near future. With reference to the statements of witnesses, who have deposed before court below upto this stage, the learned counsel for applicant submits that the complicity of present applicant in the crime in question has not emerged. He therefore contends that applicant is liable to be enlarged on bail. Ultimately, the learned counsel for applicant has referred to paragraphs 14, 18, 19, 20 and 22 of the affidavit filed in support of present third application for bail. On the above conspectus, he therefore submits that applicant is liable to be enlarged on bail.

6. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. 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 record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, it is thus urged that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

7. Per contra, the learned A.G.A. has vehemently opposed the present third application for bail. He submits that since the applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. He further submits that none of the ground as pleaded in paragraphs 14, 18, 19, 20 and 22 of the affidavit filed in support of present third application for bail are cogent enough so as to enlarge the applicant on bail. Learned A.G.A. invited the attention of Court to page 23 of the

paper book and with reference to recital occurring therein that the dead body of the deceased as well as the Motorcycle used in the commission of crime were recovered on the pointing of present applicant, the learned A.G.A. contends that the aforesaid circumstance, which has emerged against applicant has not been dislodged by the learned counsel for applicant with reference to the record upto this stage. On the above premise, the learned A.G.A. submits that no new, good or sufficient ground has emerged so as to enlarge the applicant on bail. Considering the nature and gravity of offence and also the period of punishment provided for the offence complained of, the period of incarceration undergone by applicant is by itself not so sufficient a circumstance so as to enlarge the applicant on bail. It is thus urged by the learned A.G.A. that no interference is warranted by this Court in present application. As such, the present third application for bail is liable to be rejected.

8. When confronted with above, the learned counsel for applicant could not overcome the same.

9. Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant/opposite party-2, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant and coupled with the fact that objections raised by the learned A.G.A. in opposition to present third application for bail as noted herein above are not only borne out from the record but furthermore, the same could not be dislodged by the learned counsel for applicant with reference to the record. Therefore irrespective of the varied submissions urged by the learned counsel for applicant in support of present third application for bail but without making any comment on the merits

of the case, this court does not find any new, good or sufficient ground so as to enlarge the applicant on bail.

10. As a result, present third application for bail fails and is liable to be rejected.

11. It is accordingly **rejected**.

Order Date :- 20.3.2025

YK