

Reserved on 28.04.2025

Delivered on 06.05.2025

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24699 of 2024

Applicant :- Ritesh Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Indrakant Dwivedi, Sunil Kumar Singh

Counsel for Opposite Party :- G.A., Pushpendra Kumar Yadav

Hon'ble Siddharth, J.

Heard Sri Sunil Kumar Singh, learned counsel for the applicant, Sri Pushpendra Kumar Yadav, learned counsel for informant and learned AGA for the State.

The instant bail application has been filed on behalf of the applicant, Ritesh Singh, with a prayer to release him on bail in Case Crime No. 06 of 2021, under Sections 302, 120B, 34 I.P.C, Police Station- G.R.P, District- Jaunpur, during pendency of trial.

A co-ordinate bench of this court has granted bail to co-accused, Umesh Gaur, has been by the following order dated 13.09.2021 passed in Criminal Misc. Bail Application No.24499 of 2021:-

" Heard Sri Pradeep Kumar Mishra, learned counsel for the applicant, Sri Rajiv Lochan Shukla, learned counsel for the first informant, Sri Ankit Srivastava, learned brief holder for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Umesh Gaur, seeking enlargement on bail during trial in connection with Case Crime No. 06 of 2021, under Section(s) 302, 120B, 34 I.P.C. registered at P.S. G.R.P., District Jaunpur.

The prosecution case as per the F.I.R. lodged on 02.2.2021 at about 02.10 hours by Jitendra Yadav naming Sunil Yadav, Rakesh Yadav, Lal Pratap Yadav and some unknown persons, is that his brother Bala Lakhandar Yadav @ Bala Yadav was a corporater and was also involved in the business of land. Sunil Yadav, Rakesh Yadav and Lal Pratap Yadav had enmity with him. The said persons with some other accused persons have conspired together and were keeping a watch at his brother Bala Yadav prior to his murder. Prior to the incident they had also extended threat to him. On 1.2.2021 at about 8.00 P.M. the said accused persons along with some other accused persons, who were lying in waiting for his brother Bala Yadav, murdered him on the corner of city railway station. The murder of his brother has been committed by the accused persons with deep conspiracy with some other accused persons and with their help. Ashu, Phool Chandra, Arvind, Dharmendra saw the incident and know about it.

Learned counsel for the applicant argued that that there is no eye witness to the murder. The present case is a case of circumstantial evidence. The applicant is not named in the F.I.R. The F.I.R. specifically names three accused persons namely Sunil Yadav, Rakesh Yadav and Lal Pratap Yadav along with some unknown persons. Subsequently the police informer informs the police after enquiring about the incident that the murder has been committed by Om Chandra Gupta and Umesh Gaur (the present applicant) along with two other miscreants. A motorcycle was also used in the incident which belongs to Umesh Gaur (the applicant). He further states that he will further probe about the number of the said motorcycle and about other accused persons and after getting information will inform the police. The informer further states that three accused persons named in the F.I.R. have not committed the murder but Om Chandra Gupta@Pawan and Umesh Gaur (the present applicant) along with two other accused persons have committed the murder. The said information was passed on to the police for which C.D. dated 4.2.2021 states about the same. Subsequently on the basis of the said information disclosed by the police informer, the applicant has been made an accused in the present matter whereas three accused persons named in the F.I.R. being Sunil Yadav, Rakesh Yadav and Lal Pratap Yadav have been exonerated by the police.

It is argued that subsequently the G.R.P. arrested the applicant from his house and took into possession a Pulsar motorcycle which is alleged to have been used in the present incident. The said motorcycle is registered in the name of the father of the applicant. It is argued that the applicant has no motive to commit the aforesaid offence and naming of the applicant in the present case is with mala fide intentions and also there is no credible evidence whatsoever to connect him in the crime. It is argued that the applicant has no other criminal antecedents as stated in para-12 of the affidavit and is in jail since 10.2.2021.

Per contra, learned counsel for the first informant vehemently opposed the prayer for bail and argued that the present murder has been committed by a hired assassin namely Jaideep Prakash Gayakwar of Maharashtra and the applicant was actively involved in the present case as he prior to murder, was sharing the movement of the deceased to other co-accused persons which facilitated them to commit the murder. It is argued that the motorcycle which has been recovered belongs to the applicant which was used in the incident. Further it is argued that in C.D.25 the Investigating Officer has given his conclusion after taking out the C.D.Rs. of the accused persons from which it is clear that about 11 minutes prior to the incident the co-accused Om Chandra Gupta had various conversations with the applicant which would also be incriminating and would go to show the involvement of the applicant in the present incident. It is argued that as such involvement of the applicant in the present case is there and therefore, the prayer for bail be rejected.

Learned State counsel adopted the arguments of learned counsel for the first informant and further supplemented it by arguing that from the place of occurrence a CCTV footage was taken in which a motorcycle being Pulsar motorcycle, was seen but the same was not having any number plate and later on the Pulsar motorcycle was recovered which belongs to the applicant which was stated to have been used in the incident and as such participation of the applicant is there in the present case. It is argued that thus the prayer for bail be rejected.

After having heard learned counsels for the parties and perusing the record, it is evident that the F.I.R. has been registered against three named accused persons along with some other unknown persons. The applicant is not named therein. The present case is a case of circumstantial evidence. There is no eye witness to the murder. The name of the applicant surfaces for the first time in the information of the police informer given to the police two days after the incident on the basis of which the applicant and the co-accused Om Chandra Gupta were made accused whereas the three named accused persons of the F.I.R. were exonerated. The Pulsar motorcycle as per learned State counsel seen in the CCTV footage, was not having any number plate on it but the motorcycle of the applicant which is alleged to have been recovered, was having a number plate and as such connection of the same in the present incident does not appear to be trustworthy. The applicant has no criminal history and his involvement is only on the basis of an information of the police

informer and then four phone calls from the co-accused Om Chandra Gupta 11 minutes prior to the incident on his mobile phone. The applicant has not been assigned the role of shooting on the deceased.

Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

Let the applicant- Umesh Gaur, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties (out of which one surety should be the family member of the applicant) 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 prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The 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) The applicant shall file an undertaking to the effect that he 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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., 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, in accordance with law, under section 174-A I.P.C.

(V) 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 him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

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 and send the applicant to prison.

The bail application is allowed.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

The computer generated copy of such order shall be self attested by the counsel of the party concerned.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing. "

The prayer for release of the applicant on bail on the ground of parity has been made. The applicant is languishing in jail since 10.02.2021.

Learned AGA has opposed the prayer for bail of the applicant.

Considering the fact that the identically placed co-accused has already been released on bail by this Court, without expressing any opinion on the merits of the case and for the reasons disclosed in the order of co-accused, the Court is of the view that it is a fit case for bail.

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of Dataram Singh Vs. State of U.P. and another reported in (2018) 3 SCC 22 and recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021 and considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case and considering the fact that the identically placed co-accused has already been released on bail by this Court, without expressing any opinion on the merits of the case, the Court is of the view that it is a fit case for bail. The bail application is allowed.

Let the applicant involved in the 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 evidence or threaten the witnesses.
- (ii) 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.
- (iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.
- (iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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.
- (v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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 him in accordance with law.

In case of breach of any of the above conditions, the complainant is free to move an application for cancellation of bail before this court.

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

Order Date :- 6.5.2025
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