

**Court No. - 64**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 25440 of 2024

**Applicant :-** Shailendra Singh

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Ashok Kumar Rai, Diwakar Shukla, Pavan Kumar Pandey, Sr. Advocate

**Counsel for Opposite Party :-** G.A., Manvendra Singh, Vikas Singh

**Hon'ble Samit Gopal, J.**

1. List revised.

2. Heard Sri M.P. Rai, learned Senior Advocate assisted by Sri Ashok Kumar Rai, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on records. Sri Manvendra Singh and Sri Vikas Singh, learned counsels for the first informant are not present even when the matter is taken in the revised list.

3. This is second bail application of the applicant. The first bail application of the applicant was rejected by this Court vide order dated 29.11.2023 passed in Criminal Misc. Bail Application No. 1023 of 2023 (Shailendra Singh Vs. State of U.P.).

4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Shailendra Singh**, seeking enlargement on bail during trial in connection with Case Crime No. Case Crime No.130 of 2022, under Sections 147, 148, 302, 307, 323, 504, 506 I.P.C., registered at Police Station Kalyanpur, District Fatehpur.

5. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. It is submitted that trial in the present matter has started in which Dilip Singh the first informant and injured witness has been examined as P.W.-1 who has assigned the role of assault upon the deceased with an Axe on co-accused Uttam Singh. It is submitted that as such the case of the prosecution thus specifically clinches with regard to the role of assault on the deceased, the said statement has been placed before the Court which is annexed as Annexure-7 to the affidavit. It is submitted that co-accused Munna Singh @ Yogendra Singh has been granted bail by a co-ordinate Bench of this Court vide order dated 03.05.2024 passed in Criminal Misc. Bail Application No. 22241 of 2023, the copy of the said order is annexed as Annexure-9 to the affidavit. The said order reads as under:-

*"List of fresh cases has been revised."*

*Heard Sri Mangla Prasad Rai, learned Senior counsel assisted by Sri Ashok Kumar Rai, learned counsel for the applicant; Sri Manvendra Singh, learned counsel for informant as well as the learned AGA for the State and perused the material placed on record.*

*The instant bail application has been filed on behalf of the applicant, Munna Singh @ Yogendra Singh, with a prayer to release him on bail in Case Crime No. 130 of 2022, under Sections 147, 148, 302, 307, 323, 504, 506 of IPC, Police Station- Kalyanpur, District- Fatehpur, during pendency of trial.*

*This is the second bail application. The first bail application of applicant was rejected by this Court on 30.01.2023.*

*Learned counsel for the applicant has submitted that P.W.-1, the injured witness, has been examined before trial court and he has assigned the role of causing fatal injury by axe on head of deceased to Uttam Singh. The applicant has been falsely implicated in this case on the basis of general allegations. He has no criminal history to his credit and is languishing in jail since 06.09.2022. The trial in the aforesaid case is not likely to be concluded in near future.*

*Per contra learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre-trial stage, therefore, he does not deserves any indulgence. In case the applicant is released on bail, she will again indulge in similar activities and will misuse the liberty of bail.*

*Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant, keeping in 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 Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022 and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, 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, it shall be a ground for cancellation of bail.*

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

*Registrar(Compliance) is directed to communicate this order to the concerned court below within ten days."*

**6. It is further submitted that co-accused Gajodhar has also been granted bail by a co-ordinate Bench of this Court vide order dated 18.07.2024 passed in Criminal**

Misc. Bail Application No. 20996 of 2024, the copy of the said order is annexed as Annexure-SA-2 to the supplementary affidavit dated 01.09.2024. The said order reads as under:-

*"1. Heard learned counsel for the applicant-accused, learned counsel for the informant, learned A.G.A. for the State and perused the record.*

*2. The present second bail application has been filed by the applicant-accused in Case Crime No. 130 of 2022, under Sections- 147, 148, 302, 307, 323, 504, 506 IPC, Police Station- Kalyanpur, District- Fatehpur with the prayer to enlarge the applicant-accused on bail.*

*3. It has been argued by learned counsel for the applicant-accused that applicant-accused is innocent and he has been falsely implicated in this case. The first information report was lodged against applicant-accused and co-accused Uttam Singh, Munna Singh and Shailendra Singh, alleging that on 28.07.2022 at 01.30 PM, the accused persons have left their cattle in the park of informant and when the informant objected, all the accused persons, including applicant-accused, abused and assaulted the informant and his father Bodhi Singh @ Krishna Kumar Singh. The FIR was registered under Section 323, 504, 506 IPC but later on said Bodhi Singh @ Krishna Kumar Singh has passed away and thus, section 302 IPC along with other sections, was added during investigation. Learned counsel submitted that in initial medical examination, which was conducted on 28.07.2022, four injuries were shown on the body of deceased and except the injury No.1, other injuries were simple in nature. As per x-ray report, no bony injury was found in the said injury of Bodhi Singh @ Krishna Kumar Singh. In C.T. scan report of Bodhi Singh @ Krishna Kumar Singh, only a hair line fracture of left frontotemporal bone of deceased was shown. It was stated that the injuries sustained by Bodhi Singh @ Krishna Kumar Singh were not of such serious or of such nature so as to cause his death. Informant Dilip Singh has sustained three injuries and the injury no.1 and 2 were referred for x-ray and as per report of the radiologist, no bony abnormality was seen and that in C.T. scan of injured Dilip Singh. During treatment, said Bodhi Singh @ Krishna Kumar Singh has expired on 05.09.2022 in Apollo Hospital, Lucknow. The recovery of iron rod was shown from co-accused Uttam and of stick from co-accused Shailendra Singh. Nothing was recovered from possession of applicant-accused.*

*4. It is further submitted that the first bail application of the applicant was rejected by this Court vide order dated 24.03.2023 and one of the ground for rejection was that bail application of similarly placed co-accused Munna Singh @ Yogendra Singh has already been rejected by co-ordinate Bench of this Court. It was stated that after rejection of first bail application of the applicant, statement of informant/P.W.-1 Dilip Singh has been recorded before the trial Court and in his statement, he has assigned the role of assaulting the deceased with axe to co-accused Uttam Singh. Further, the second bail application of similarly placed co-accused Munna Singh @ Yogendra Singh has already been allowed by co-ordinate Bench of this Court and role of applicant has been shown similar to him. Lastly, it was submitted that applicant is languishing in jail since 06.09.2022, having no criminal history, and that in case the applicant is released on bail, he will not misuse the liberty of bail and will co-operate in trial.*

*4. Learned A.G.A. and learned counsel for the informant have opposed the prayer for bail and submitted that applicant is named in the First Information Report and first bail application of applicant has already been rejected by this Court.*

*5. Considering submissions of learned counsel for the parties, nature of accusations, period of detention and all attending facts and circumstances of the case, without expressing any opinion on the merits of the matter, a case for bail is made out.*

*6. The bail application is allowed.*

*7. Let the applicant - Gajodhar involved in aforesaid case be released on bail on furnishing each a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:*

*i. The applicant shall not tamper with the evidence during the trial.*

*ii. The applicant shall not pressurize/ intimidate any of the prosecution witness.*

*iii. The applicant shall appear before the trial court on the date fixed, unless his personal presence is exempted.*

*iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the*

*commission of which he is suspected.*

*v. 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 them from disclosing such facts to the Court or to any police officer or tamper with the evidence.*

*8. In case of breach of any of the above condition, the Court concerned shall be at liberty to cancel bail of applicant in accordance with law."*

7. It is further submitted that bail of co-accused Uttam Singh has been rejected by this Court vide order dated 09.04.2025 passed in Criminal Misc. Bail Application No. 6172 of 2025, the copy of the said order has been produced before the Court which is taken on record. The applicant has no criminal history as stated in para 17 of the affidavit and is in jail since 06.09.2022.

8. *Per contra*, learned counsel for the State opposed the prayer for bail but could not dispute the arguments with regard to the version given by P.W.-1 and the fact that two co-accused have been granted bail.

9. After having heard learned counsel for the parties and perusing the record, it is evident that this is second bail application of the applicant. The trial in the matter has started in which Dilip Singh is an alleged injured witness has been examined as P.W.-1. He has assigned the specific role of assault with an Axe upon the deceased on co-accused Uttam Singh. Co-accused Munna Singh @ Yogendra Singh and Gajodhar have been granted bail by co-ordinate Benches of this Court.

10. 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.

11. Let the applicant- **Shailendra Singh**, be released on bail in the aforesaid case crime number on 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 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.

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 and send the applicant to prison.

13. The bail application is **allowed**.

14. Pending application (s), if any, shall stand disposed of.

**Order Date :- 5.5.2025**

AS Rathore

(Samit Gopal,J.)