

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36204 of 2024

Applicant :- Rocky Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhisht Jaiswal, Atharva Dixit, Sr. Advocate

Counsel for Opposite Party :- G.A., Prince Srivastava

Hon'ble Siddharth, J.

1. Heard Sri Manish Tewary, learned Senior Advocate, assisted by Sri Atharva Dixit, learned counsel for the applicant; Sri Prince Srivastava, learned counsel for the informant; Sri G. N. Kanaujiya, learned AGA for State and perused the material on record.

2. The instant bail application has been filed on behalf of the applicant, Rocky Yadav, with a prayer to release him on bail in **Case Crime No. 0052/2024, under Sections 302 and 506 of IPC, Police Station- Kathgar, District- Moradabad**, during pendency of trial.

3. There is allegation in the F.I.R., that the husband of the informant, Annu and brother-in-law (Devar), Ankush, were quarreling on 29.01.2024. The applicant intervened and their quarrel was stopped. Because of this enmity today on 30.01.2024 at about 03:03 p.m., the applicant made firing from fire arm on the chest of her husband, Annu, and when his brother, Ankush, came to save him, he also shot him, but Ankush, escaped while Annu died on the spot. It has alleged that the applicant left the scene of incident threatening the accused.

4. Learned counsel for the applicant has submitted that the prosecution story is itself absurd. The informant has stated that one day earlier it was the applicant who settled the dispute between Ankush and Annu and it has alleged that next day because of aforesaid enmity, he made attempt on the life of both, one of them has died. The perusal of the first information report of the present case would go on to reveal that the same has been lodged after an inordinate delay of more than 8 hours, regarding which no plausible explanation has been rendered by the first informant. The aforementioned delay in the lodging of the first information report,

assumes much significance in the light of the fact that admittedly as first information report, the first informant herself and her brother-in-law Ankush were allegedly the eye witnesses and most importantly as per the first information report itself, the deceased of the present case had died on the spot and it was not a case where the deceased was rushed to Hospital or had remained admitted at any hospital and was receiving any treatment.

5. Thereafter the post mortem examination on the body of the deceased was conducted on 31.01.2024 at 03:15 P.M. and interestingly a perusal of the post mortem examination report would go on to reveal that as per the post mortem examination report of the deceased, the deceased of the present case had sustained as many as two firearm wounds of entry, while there were five other injuries in the form of abrasions and a lacerated wound of 6cm x 5cm. Present case is a case of blind murder which was actually witnessed by none of the witness and the entire proceedings of the present case are ante timed.

6. A perusal of the inquest report of the deceased would go on to reveal that at the conclusion of the inquest report, the column where the number of pages, which a first information report consists of has been left blank which would clearly go on to demonstrate that at the time when the inquest proceedings were conducted, first information report of the present case was not even in existence. Similarly a perusal of the post mortem examination report of the present case would go on to reveal that the same completely belies the version of the first information report as the version of the first information report speaks only about a shot being fired as the term used therein is 'गोली मार दी'.

7. However, a perusal of the post mortem examination report would go on to show that the deceased had sustained two firearm injuries and apart from the two firearm injuries, he had sustained five other injuries which are totally unexplained as per the first information report. The said fact would be further fortified from the fact that there were two bullets recovered from the body of the deceased. The aforementioned discrepancy in the ocular evidence and the medical evidence is only owing to the fact that neither the first informant nor any of the other alleged eye witnesses had actually witnessed the occurrence in question and it was after the discovery of the dead body that the present criminal proceedings were initiated.

8. Thereafter the investigating officer visited the place of

occurrence and at the time of the spot inspection an empty cartridge of 315 bore was recovered from the place of occurrence.

9. As per the version of the first information report, the incident in question took place while the deceased along with his brother Ankush were standing near their house, however, a perusal of the site plan prepared at the time of the spot inspection, would go on to reveal that the house of the first informant is nowhere in the vicinity to the place of occurrence.

10. In the first information report as well as in her statement statement under Section 161 Cr.P.C., informant has categorically mentioned that a shot was fired towards Ankush but the same did not cause any injury, but surprisingly aforesaid Ankush was also medically examined on 31.01.2024 at 01:10 A.M., itself and at the time of the medical examination a scabbed reddish brown abrasion was found on his left wrist joint and as per the opinion of the doctor, the said injury was caused by hard and blunt object.

11. Thereafter vide parcha no.3 of the case diary dated 01.02.2024, the investigating officer claims to have arrested the applicant in respect of which a G.D. Entry No. 106 was made at 21:31 hours and as per the said G.D. Entry the applicant was arrested at about 06:10 P.M. and at the time of the arrest a country made pistol of 315 bore along with an empty cartridge in the same was allegedly recovered from the applicant. No such recovery, as alleged by the investigating officer, was made from the possession of the applicant and in fact the said recovery is hand work of the police and has been planted upon the applicant to ensure his implication.

12. Thereafter vide parcha no. 13 of the case diary dated 01.03.2024 i.e., after a lapse of one month, statement under Section 161 Cr.P.C. of alleged injured/eye witness and real brother of the deceased of the present case, namely, Ankush, was recorded and the perusal of his statement under Section 161 Cr.P.C., shows that for the first time he has stated that two shots were fired upon the deceased of the present case and he had also sustained an injury as he was pushed aside by the applicant and co-accused Ajeet. The said act of the injured choosing not to get his statement recorded at the first instance despite being available before the investigating officer, and then getting his statement recorded after one month is nothing but a tactic by the prosecution to bring the medical evidence in consonance with the ocular evidence, as at the time of getting his statement recorded before the investigating officer the post mortem report and the injury report were available to the prosecution. The aforesaid delay of more than one month in

recording of the statement under Section 161 Cr.P.C., of the injured is more fatal to the prosecution in the light of the fact that the injured happens to be the real brother of the deceased of the present case.

13. Thereafter vide parcha no.15 of the case diary dated 11.03.2024, statements under Section 161 Cr.P.C., of Ravi Singh (father of the deceased and injured), Smt. Shanti Devi (mother of the deceased and injured) and Smt. Anita (sister-in-law of deceased wife of injured) were recorded by the investigating officer and as per their statements at the time of the incident they were present in their house and after hearing the sounds of the gunshot they had arrived at the place of occurrence.

14. The applicant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 01.02.2024. The trial in the aforesaid case is not likely to be concluded in near future.

15. Learned A.G.A. and learned counsel for informant have vehemently opposed the prayer for bail of the applicant and they have submitted that the informant is the eye witness of the incident. Before the trial court nine prosecution witnesses have been examined. The trial is on the verge of conclusion, and therefore, there is no justification for enlarging the applicant on bail. In case he is released on bail, he will again indulge in similar activities and will misuse the liberty of bail.

16. After hearing the rival submissions, this Court does not find rebuttal of arguments of counsel for applicant by other side.

17. 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 paragraph no.53 of Apex Court in the case of **Manish Sisodia Vs. Directorate of Enforcement 2024, (SC) LawSuit 677** 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.

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

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

Order Date :- 19.5.2025
Abhishek