

Court No. - 47

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41010 of 2024

Applicant :- Kunal Bhati

Opposite Party :- State of U.P.

Counsel for Applicant :- Ghan Shyam Dubey

Counsel for Opposite Party :- Amit Daga,G.A.,Prem Nath Tyagi,Vikrant Rana

Hon'ble Siddharth,J.

Heard Sri Vinay Saran, learned Senior Counsel assisted by Sri Ghan Shyam Dubey, learned counsel for the applicant; Sri Amit Daga, learned counsel for the informant and learned A.G.A for the State.

The prosecution case is that the alleged incident is said to have taken place on 01.05.2024 at 02:15 p.m., for which the first information report was lodged on the same day i.e., 01.05.2024 at 11:17 p.m. According to the prosecution case the informant is running a *Dhaba* in the name of Shiva Dhaba near Nat Madhaiya CNG Pump. It is alleged that on the date of incident while the son of the informant namely, Kunal, aged about 14 years was sitting and at about 2:15 p.m (noon) a girl came to aforesaid hotel and took his son, Kunal, with her and after a long time his son did not return the informant tried to contact his son on his mobile but his phone was found switched off.

The dead body of the deceased, Kunal Kaushik, was recovered on 05.05.2024 near canal of Jalkheda and the inquest proceedings were undertaken on the same day at 12:00 (noon) before inquest witnesses. On 09.05.2024 the three accused persons, namely, Manoj Sharma, Himanshu and applicant-Kunal Bhati, were arrested during vehicle checking and from their joint possession two country made pistol 315 bore and two empty cartridges, 5 alive cartridges, 315 bore were allegedly recovered. It is alleged from the possession of the applicant, three alive cartridges and a country made pistol were recovered. On 09.05.2024 itself confessional statements of arrested accused including applicant were allegedly recorded in which the applicant did not confess his guilt. On 26.05.2024 the investigating officer recorded second statement of the informant, Krishna Kumar Sharma, in which for the first time the name of the applicant came to light. It is pertinent to mention here that while the applicant was arrested he sustained

fire arm injury on calf region, which was caused by police personnel during aforesaid encounter.

It is alleged that on the pointing out of co-accused, Manoj Sharma, S/o, Rajendra Sharma and Himanshu, S/o Late Jeet Singh Chaudhary, one android mobile phone, one briefcase (safari), one huddi black colour, one shirt black colour belonging to deceased, Kunal, were allegedly recovered.

Counsel for the applicant submits that the applicant is not named in the first information report. The name of the applicant came to light for the first time in the second statement of the informant on 26.05.2024. No role of the applicant has been assigned in the instant matter except his alleged confessional statement. In fact, nothing has been recovered from the possession of the applicant or on his pointing out. The alleged recovery is totally false and planted by the police in collusion with the informant. No motive has been shown to implicate the applicant. The implication of the applicant is based on falsehood and with some ulterior motive. Implication of the applicant is totally based on afterthought. The alleged victim is not recovered from the possession of the accused nor any other incriminating article has been recovered from the possession of the applicant. The applicant has not kidnapped or abducted the son of informant (since deceased). The whole prosecution story is totally false and fabricated and prima-facie no case under Sections- 364-A, 302, 201, 34 IPC is made out against the applicant. There is no independent or public witness of the alleged occurrence to justify or to support the prosecution version or implication of the applicant in the present case. He is in jail since 09.05.2024 and has criminal history of two cases to his credit connected with the present case, one under Arms Act and other under U.P. Gangsters Act.

Counsel for the applicant has further submitted that co-accused, Himanshu Chaudhary and Manoj Sharma, have been granted bail by this court vide Criminal Misc. Bail Application Nos. 38842 of 2024 and 28635 of 2024. The aforesaid orders are quoted hereinbelow :-

"Himanshu Chaudhary in CRIMINAL MISC. BAIL APPLICATION No. - 38842 of 2024

Matter is taken up in the revised call.

By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 167 of 2024 at Police Station- Beeta-2, District- Gautam Budh Nagar under Sections 364A, 302, 201, 34 IPC. The applicant is in jail since 09.05.2024.

The bail application of the applicant was rejected by the learned trial court on 24.09.2024.

The following arguments made by Shri Ramesh Chandra Yadav, learned counsel assisted by Shri Anil Kumar, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Vikrant Rana learned counsel for the first informant and Shri Shrawan Kumar Dubey, learned AGA from the record, entitle the applicant for grant of bail:

1. Briefly put the prosecution case set out in the FIR dated 01.05.2024 is that the deceased was in a hotel on the fateful day on 01.05.2024. At 2:15 PM on date one lady came to the hotel and took the deceased with her. The deceased did not return home. Thereafter, his phone was switched off.

2. The applicant was neither nominated in the FIR nor in the statement of the first informant. The applicant was subsequently nominated in the second statement of the first informant. The said statement is unreliable for various reasons. There was no cause for the failure of the first informant to promptly inform the police authorities about the complicity of the applicant at the time of registration of the FIR. The applicant was nominated as an afterthought and the instigation of the inimical parties.

3. The applicant had no motive to commit the offence.

4. Mobile phone, clothes and suitcase were planted on the applicant by the police authorities to burnish their credentials.

5. There is no independent witness to the recovery.

6. The recovered articles cannot be connected with the offence.

7. Learned counsel for the applicant claims congruency in role and seeks parity in relief granted to co-accused who has been granted bail by this Court on 12.09.2024 in Criminal Misc. Bail Application No. 28635 of 2024.

8. The applicant has explained his criminal history. It is also contended that the applicant is a convenient scapegoat for the police authorities. The applicant has been falsely nominated in a number of cases only to show the proficiency of the police investigators. The said cases do not have any bearing on the instant bail application.

9. The applicant is not flight risk. The applicant being law abiding citizen have always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- Himanshu Chaudhary 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 below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any

witness during the trial.

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

(iii) The learned trial court is directed to fix the sureties after due application of mind in light of the judgement rendered by this Court in *Arvind Singh v. State of U.P. Thru. Prin. Secy. Home Deptt.* (Application U/S 482 No.2613 of 2023).

The learned trial court shall ensure that the right of bail of the applicant granted by this Court is not frustrated by arbitrary demands of sureties or onerous conditions which are unrelated to the socio-economic status of the applicant. "

"Manoj Sharma, in CRIMINAL MISC. BAIL APPLICATION No. - 28635 of 2024

Matter is taken up in the revised call.

By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 167 of 2024 at Police Station- Beeta-2, District- Gautam Budh Nagar under Sections 364A, 302, 201, 34 IPC. The applicant is in jail since 09.05.2024.

The bail application of the applicant was rejected by the learned trial court on 08.07.2024.

The following arguments made by Shri Brij Lal Shukla, learned counsels on behalf of the applicant, which could not be satisfactorily refuted by Shri Kapil Tyagi, learned counsel assisted by Shri Ashish Tyagi and Shri Sita Ram Patel, learned counsels on behalf of the first informant and Shri Shrawan Kumar Dubey, learned AGA from the record, entitle the applicant for grant of bail:

1. Briefly put the prosecution case set out in the FIR dated 01.05.2024 is that the deceased was in a hotel on the fateful day on 01.05.2024 when at 2:15 PM on date, one lady came to the hotel and took the deceased with her. The deceased did not return home. Thereafter, his phone was switched off.

2. The applicant was neither nominated in the FIR nor in the statement of the first informant. The applicant was subsequently nominated in the second statement of the first informant. The said statement is unreliable for various reasons. There was no cause for the failure of the first informant to promptly inform the police authorities about the complicity of the applicant at the time of registration of the FIR. The applicant was nominated as an afterthought and the instigation of the inimical parties.

3. The applicant had no motive to commit the offence.

4. Mobile phone, clothes and suitcase were planted on the applicant by the police authorities to burnish their credentials.

5. There is no independent witness to the recovery.

6. *The recovered article cannot be connected to the offence.*

7. *The applicant does not have any criminal history apart from the instant case.*

8. *The applicant is not flight risk. The applicant being law abiding citizen have always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.*

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- Manoj Sharma 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 below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

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

(iii) The learned trial court is directed to fix the sureties after due application of mind in light of the judgement rendered by this Court in Arvind Singh v. State of U.P. Thru. Prin. Secy. Home Deptt. (Application U/S 482 No.2613 of 2023).

The learned trial court shall ensure that the right of bail of the applicant granted by this Court is not frustrated by arbitrary demands of sureties or onerous conditions which are unrelated to the socio-economic status of the applicant. "

Counsel for the informant informs that bail order of co-accused, Manoj Sharma, has been challenged before the Apex Court by preferring the S.L.P but he is not aware about the date fixed before the Apex Court for hearing the aforesaid S.L.P.

On the other hand learned A.G.A has opposed the prayer for bail.

After considering the rival submissions, this court finds that it is a case of circumstantial evidence. There does not appears to be any credible evidence against the applicant at this stage. He has been implicated in this case on the basis of information given by informer along with two co-accused persons who have already been enlarged on bail during the alleged vehicle checking. The applicant had no previous criminal history to his credit. No reply to the arguments of counsel for the applicant has been given by the other side.

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, larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of ***Manish Sisodia vs. Directorate of Enforcement, 2024 LawSuit (SC) 677*** 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, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant, Kunal Bhati, involved in Case Crime No. 167 of 2024, under Sections- 364-A, 302, 201, 34 IPC, Police Station- Beeta-2, District- Gautam Budh Nagar, 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

(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 misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the 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 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, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 15.5.2025

Rohit