

Court No. - 67

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12459 of 2021

Applicant :- Pappi

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi,J.

Heard Shri Anil Kumar Ojha, learned counsel for the applicant through virtual mode and learned A.G.A. Perused the record.

By means of the present bail application the applicant, who is facing prosecution in connection with Case Crime No.41 of 2020, u/s 302, 201 I.P.C., P.S.-Shergarh, District-Mathura, is seeking his enlargement on bail during trial. The applicant is in jail since 11.3.2020.

Submission of learned counsel for the applicant is that the entire case hinges upon the broken links of circumstantial evidence. The applicant is named in the F.I.R. The first informant Deepu has lodged the present F.I.R. on 9.3.2020 for the incident said to have taken place on 28.02.2020. There is inordinate delay in lodging of the F.I.R. of which no explanation is coming forward. Thereafter, one Shyam Singh s/o Durjan, who happens to be maternal uncle (*Mama*) of the deceased, after ten days of the incident reveals that he has seen the deceased going on motorcycle with the accused Virendra and Pappi (the applicant). Thereafter the whereabouts of the deceased is not known. It is further contended by learned counsel that only on the basis of speculations the name of applicant has been dragged into this case. There is no recovery of any incriminating material from the possession or at the pointing out of the applicant. The applicant is having no criminal antecedents.

Learned A.G.A. has opposed the prayer for bail.

Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and 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 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 Pappi, who is involved in aforementioned case

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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) 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.

(ii) THE APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS COUNSEL. IN CASE OF HIS ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM UNDER SECTION 229-A IPC.

(iii) 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 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 HIM 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.

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

It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Since the bail application has been decided under extra-ordinary circumstances, thus in the interest of justice following additional conditions are being imposed just to facilitate the applicant to be released on bail forthwith. Needless to mention that these additional conditions are imposed to cope with emergent condition-:

- 1. The applicant shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.***
- 2. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.***
- 3. The computer generated copy of such order shall be self attested by the counsel of the party concerned.***
- 4. 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.***

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/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.

Order Date :- 31.5.2021

M. Kumar