

Reserved on – 28.7.2021

Delivered on – 4.8.2021

Court No. - 19

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Case :- CRIMINAL MISC. BAIL APPLICATION No. - 26289 of 2020

Applicant :- Soib

Opposite Party :- State of U.P.

Counsel for Applicant :- Akhilesh Kumar,Urmila Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamsbery,J.

1. This bail application under Section 439 of Code of Criminal Procedure is filed by the applicant seeking enlargement on bail during trial in connection with Case Crime No.321 of 2019, under Sections 147, 148, 323, 324, 307, 452, 504, 506, 302 IPC, Police Station – Kotwali, District – Fatehpur.

2. In the present matter, allegedly five named accused including the applicant, entered inside the shop of Shanu (husband of informant) at about 10:00 p.m. on 15.5.2019, pulled him out and assaulted by *Chaapad*, stick, kicks and fist. Babloo (elder brother of Shanu), Anisa Begum (mother of Shanu) and Afroz who came to rescue Shanu, were also assaulted. Shanu succumbs to injuries during treatment in the early morning on 16.5.2019. According to post-mortem report of Shanu (since deceased) received seven injuries whereas three injured persons have received injuries of simple nature.

3. Learned counsel for applicant submitted that all other four co-accused have already been granted bail by a co-ordinate Bench of this Court. For reference, the relevant part of the said orders are mentioned hereinafter :-

Bail Application no.44682 of 2019 (Mohd. Munaver)

“Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, submissions of the learned counsel for the parties noted herein above, larger mandate of the Article 21 of the Constitution of India 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.”

Bail Application No.55905 of 2019 (Shahnawaj)

“Considering the submissions of the learned counsel for the parties, 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.”

Bail Application No.26968 of 2020 (Fujail)

“Considering the overall facts and circumstances, the nature of allegations, the gravity of offence, the severity of the punishment, the evidence appearing against the accused, but without expressing any opinion on merits, this Court finds it to be a fit case for bail.”

Bail Application No.11488 of 2020 (Shibbu @ Mohammad Sohel Ansari)

“Looking to the facts and circumstances of the case, it is a fit case for bail, I am inclined to release the applicant on bail.”

4. Learned counsel further submitted that no specific role was assigned to applicant in the First Information Report, however, in the statement recorded under Section 161 Cr.P.C., he was assigned *danda* in the statement of alleged eye-witness - Mubarak Ali whereas co-accused, who have assigned *Cutter and Chaapad*, have already been released on bail. Applicant is also entitled to be released on bail on the ground of parity.

5. Learned A.G.A. has vehemently opposed the prayer and submitted that in the occurrence, deceased was pulled out from the shop by all the accused and they assaulted him by *Chaapad*, *Cutter*, stick, kicks and fist, who received seven injuries and died within hours. During occurrence, all the three eye-witnesses were

also injured. The eye-witness account were consistent in regard to the presence of all the accused as well as about manner of assault.

6. Heard learned counsel for the parties and perused the record.

7. (A) Law on bail is well settled that 'Bail is rule and Jail is exception'. Bail should not be granted or rejected in a mechanical manner as it concerns liberty of a person. At the time of considering an application for bail, the Court must take into account certain factors such as existence of a prima facie case against the accused, gravity of the allegations, severity of punishment, position and status of the accused, likelihood of the accused fleeing from justice and repeating the offence, reasonable apprehension of tampering with the witnesses and obstructing the Courts as well as criminal antecedents of the accused.

(B) It is also well settled that the Court while considering an application for bail must not go into deep merits of the matter such as question of credibility and reliability of prosecution witnesses which can only be tested during the trial. Even ground of parity is one of the above mentioned aspects which are essentially required to be considered.

(C) It is also well settled that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner, compassionately and not in whimsical manner. It is also well settled that the Court while considering an application for bail must not go into deep merits of the matter such as question of credibility and reliability of prosecution

witnesses which can only be tested during the trial. Even ground of parity is one of the above mentioned aspects which are essentially required to be considered. It is also well settled that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner, compassionately and not in whimsical manner. The Court should record the reasons which have weighed with the court for the exercise of its discretionary power for an order granting or rejecting bail. Conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

8. The Court is shocked and dismayed at the way, bail applications are opposed by the State Law Officers before this Court. The assistance given by them, in most of cases, is not up to the mark. For reference, submission on behalf of State before a co-ordinate Bench has noted in the orders of the bail applications of the co-accused, which are as follows :-

Bail Application no.44682 of 2019 (Mohd. Munaver)

“On the other hand learned AGA has opposed the prayer for bail but could not dispute the above submissions.”

Bail Application No.55905 of 2019 (Shahnawaj)

“On the other hand learned AGA opposed the prayer for bail.”

Bail Application No.26968 of 2020 (Fujail)

“Learned A.G.A. has opposed the bail plea but could not dispute above facts.”

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Bail Application No.11488 of 2020 (Shibbu @ Mohammad Sohel Ansari)

“Per contra, learned brief holder for the State opposed the prayer for bail but could not dispute that co-accused Mohd. Munaver, Shahnawaj and Fujail have been granted bail by a co-ordinate Benches of this Court.”

9. Neither the correct facts of the case in hand nor the manner of assault nor the weapon assigned, nor the number and nature of injuries were placed before the co-ordinate Bench even the cases of the co-accused, who assigned *Chaapad* and Cutter in the statement of one of the eye-witness – Mubarak Ali was not distinguished before the co-ordinate Bench and they were granted bail on parity.

10. The Court is informed by learned A.G.A. present in the Court that they receive files only at about 10'0 Clock in the Court on the day when case is listed. Therefore, due to paucity of time, they are unable to go through the entire file/case diary and are not able to assist the Court properly.

11. The State of Uttar Pradesh is the biggest litigant before this Court. The Court is informed that at about 1,000 bail applications are listed in a day before different Benches of this Court. Therefore, it is apparent that in the absence of proper assistance, rights of either of the parties are likely to be affected adversely. Therefore, it is imperative to pass certain directions to streamline the functioning of State Law Officer.

12. Shri Manish Goel, learned Additional Advocate General is directed to look into the matter and prepare certain guidelines in the form of a report within six weeks from today so that the State Law Officer may get reasonable time to prepare the case in order to give proper assistance to the Court while hearing the bail

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applications and any ancillary issue. A copy of the report was also be placed before this Court.

13. Coming back to the merit of the case, the contents of First Information Report as well as the bare perusal of statements of the eye-witnesses, it appears that all the five accused including the applicant entered into the shop of deceased and repeatedly assaulted after pulling him out of the shop by *Chhapad*, Cutter, stick, kicks and fists. The presence of the applicant along with co-accused, *prima facie*, established from the evidence on record. Deceased has received seven injuries (two on left side of scalp, three on chest and two on fingers) whereas the three eye-witnesses have also received injuries which are of simple in nature.

14. In the statement of the witness – Mubarak Ali, applicant is assigned a cutter whereas the witness - Yasmeen has assigned *danda* and the third witness has not assigned any specific weapon to any accused. However, presence and participation of the applicant remained consistent.

15. Considering the events of occurrence, manner of assault, number of injuries received by the deceased and the eye-witnesses were also injured, I am unable to grant relief to the applicant. So far as, parity is concerned, it is settled law that parity alone is not a sole ground to grant bail and the orders whereby the co-accused have been granted bail, are passed in absence of proper assistance on behalf of the State Law Officer, who were failed to brought the correct facts of the occurrence before the co-ordinate Bench of this Court.

16. In view of the above, the present bail application is

dismissed.

17. Put up this matter on 15.9.2021, as fresh, for consideration of the outcome of the direction passed in paragraph no.12 of this order.

Order Date: 4.8.2021

Rishabh

[Saurabh Shyam Shamshery, J.]