

Court No. - 47

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24208 of 2022

Applicant :- Manish

Opposite Party :- State of U.P.

Counsel for Applicant :- Kapil Tyagi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Kapil Tyagi, learned counsel for the applicant, Sri Arvind Kumar, learned AGA for the State and perused the record of the case.

2. By way of the present application, applicant made prayer to release him on bail in Case Crime No. 39 of 2019, under Sections 302, 120B IPC, Police Station Sikandra, District Agra.

3. Applicant is the cousin brother (Mausera Bhai) of the deceased. The FIR of the present case was lodged on 20.01.2019 under Sections 302, 120B IPC against the applicant and his parents with the allegation that on 15.11.2018 applicant along with his parents ablazed the sister of informant, namely Rakhi by pouring kerosene oil and during the course of treatment, Rakhi (sister of informant) succumbed to her injuries on 20.11.2018. The dying declaration of the deceased Rakhi was recorded by the Additional City Magistrate-III, Agra on 15.11.2018 i.e. on the date of incident in the hospital in which she stated that applicant, his parents and Mintu (brother of applicant) dragged her in their home and after pouring kerosine oil ablazed her.

4. Learned counsel for the applicant submitted that entire allegation made in the FIR and in the dying declaration of the deceased is totally false and baseless and initially, during investigation, the accusation made against the applicant and his parents were found false, therefore, final report was submitted on 19.02.2019 thereafter, on the direction of the SSP concerned, further investigation was commenced and on 18.8.2019 charge-sheet was submitted against the parents of the applicant whereas, in respect of applicant, investigation continued. He further submitted that thereafter charge-sheet against the applicant was also filed. Learned counsel for the applicant submitted that dying declaration of the deceased Rakhi is not in accordance with law and is tutored one and he vehemently submitted that co-accused Smt. Mausammi @ Triveni, the mother of applicant, Raju, the father of applicant and Mintu, the brother of applicant have already been enlarged on bail by the co-ordinate Bench of this Court and as per dying declaration the allegation against the applicant is also at par with those accused persons, who have been enlarged on bail, therefore, on the ground of parity applicant should also be released on bail.

5. Per contra, learned AGA submitted that there is specific allegation against the applicant in the dying declaration of the deceased recorded by the Additional

City Magistrate-III on 15.11.2018 and while granting bail to co-accused, namely, Smt. Mausammi @ Triveni, Raju and Mintu, the dying declaration of the deceased could not be discussed, therefore, on the ground of parity applicant should not be released on bail.

6. I have heard both the parties and perused the record of the case.

7. From the perusal of the FIR, it appears that informant, who is brother of the deceased was not an eye witness, but on 15.11.2018, Additional City Magistrate-III recorded the dying declaration of the deceased Rakhi in the hospital, which is annexed as Annexure No. 17 to the affidavit filed in support of bail application. From the perusal of the dying declaration of deceased it reflects that there is specific allegation against the applicant and co-accused Smt. Mausammi @ Triveni, Raju and Mintu that all the accused persons including the applicant dragged her in their house and ablazed her after pouring kerosene oil.

8. Firstly co-accused Mintu @ Amit was granted bail by co-ordinate Bench of this Court on 6.8.2021 vide Crl. Misc. Case No. 27220 of 2021. Perusal of the bail order of co-accused Mintu @ Amit shows that he was granted bail merely on the basis of argument advanced by learned counsel for the co-accused. The bail order dated 6.8.2021 is extracted below:

"Heard learned counsel for the applicant and learned A.G.A. for the State and perused the material on record.

By means of this application, the applicant who is involved in Case Crime No. 39 of 2019, under section 302 IPC, P.S. Sikandra, District Agra, is seeking enlargement on bail during the trial.

The first information report of this incident was lodged by the complainant about the unnatural death of his sister on 20.11.2018. It was alleged in the F.I.R. that the deceased was married with Kunwar Pal who was living in Sikandara Agra at the house of her naniya sasur Bhoopat and the complainant sister (deceased) who is mausiya saas was also living with her family in the same house. It was also alleged in the F.I.R. that there was a family dispute between them over distribution of property and due to that reason family of mausiya saas of the deceased was having enmity with the deceased. It was also alleged in the F.I.R. that the accused persons after pouring kerosine oil set ablaze the deceased. The deceased received serious burn injuries. She was taken to the hospital, where she succumbed to injuries during treatment on 20.11.2018. It was also alleged in the F.I.R. that police has not investigated the matter properly in connivance with the accused persons and no proceedings were initiated against the accused persons.

Learned counsel for the applicant has submitted that the first information report was lodged in pursuance of application given under section 156 (3) Cr.P.C. He further submits that the present accused is quiet innocent and he has been falsely implicated in the present case. Initially the matter was investigated and the police submitted the final report. Later on the matter was further investigated and the police has submitted charge sheet against the applicant on the basis of same evidence on which earlier final report was submitted. He has next submitted that the present accused was not named in the F.I.R. and the name of the present accused surfaced in the alleged dying declaration of deceased. He has submitted that deceased dying declaration was tortured one and she has given dying declaration in greed of property of naniya sasaur Bhoopat. He has submitted that Bhoopat whose property was distributed between the Kela and mausiya saas Mausammi and her family. He next submitted that deceased wanted share in property of Bhoopat but she was not given any share in property by Bhoopat and the property was distributed through a will by Bhoopat to her two daughters one is Mausammi and other is Kela. Kela is mother-in-law of the deceased. He has submitted that to put pressure on Bhoopat deceased threatened to commit suicide and she had

poured kerosine oil over her body herself and set fire.

He lastly submitted that the applicant has no criminal history and he is languishing in jail since 27.09.2019 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

The prayer for bail has been vehemently opposed by learned A.G.A and submitted that deceased has given a dying declaration before her death and in which she has specifically nominated the present accused and other accused persons and she has died due to burn injuries.

After considering the rival submissions made by learned counsel for the parties and without expressing any opinion on the merits of the case, this Court is of the view that the applicant is entitled to be enlarged on bail during the pendency of the trial.

Let the applicant, Mintu @ Amit be released on bail in the aforesaid case on his executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

(a) The applicant shall attend the court according to the conditions of the bond executed by him.

(b) 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 him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

It is further directed that the identity, status and residence proof of the sureties be verified by the authorities concerned before they are accepted.

In case of breach of any of the above conditions, the trial court will be at liberty to cancel the bail.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by learned counsel for the applicant along with a self attested identity proof of the said persons (preferably Aadhar Card) mentioning the mobile number (s) to which the said Aadhar Card is linked before the concerned Court/Authority/Official

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."

9. Similarly on 22.11.2021, co-accused Raju, the father of the applicant was released on bail by another co-ordinate Bench of this Court in Crl. Misc. Bail Application No. 45996 of 2021. Perusal of the bail order of co-accused Raju dated 22.11.2021 shows that he was also released on bail on the basis of argument advanced by learned counsel for co-accused Raju. The bail order dated 22.11.2021 is extracted below:-

"Heard learned counsel for the applicant, learned A.G.A. for State and perused the material available on record.

Accused-applicant, involved in S.T. No. 461 of 2019, Case Crime No.39 of 2019, under Section 302 I.P.C., Police Station Sikandra, District Agra, applied for bail.

Learned counsel for the applicant submits in following manner :-

(i) Applicant is innocent and has been falsely implicated in the present case; he has committed no offence; entire prosecution story is false and fake.

(ii) The applicant is named in F.I.R. but he has no concerned with the present case. He is

the Mausiyā Sasur of the victim. There was a dispute between the parties that is why victim committed suicide.

(iii) The allegation against the present applicant has been levelled only in the dying declaration of the deceased which is tutored and the same is very weak.

(iv) The investigation of the case has come to an end and charge sheet has already been submitted by Investigating Officer. There is no direct evidence against the applicant and no statement of children of deceased has been recorded.

(v) The incident is said to be in the house, thereafter, near a temple. The co-accused Mintu @ Amit, whose name has also come during investigation as well as in the dying declaration of deceased.

(vi) Co-accused Minto @ Amit has already been granted bail by co-ordinate Bench of this Court vide order dated 06.08.2021 in Criminal Misc. Bail Application No. 27220 of 2021 and the case of the applicant stands of identical footing, hence the applicant is also entitled for bail on the ground of parity.

(vii) Applicant is in jail since 03.07.2019. There is no possibility of the applicant's fleeing away from the judicial process or tampering with the witnesses. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail.

Learned A.G.A. opposed the prayer for bail but conceded the factual submissions made by the learned counsel for the applicant.

Considering the facts and circumstances of the case, rival contention of learned counsel for the parties, detention of applicant in jail, severity of punishment in case of conviction, factum of bail to co-accused, evidence collected by I.O. during investigation and without commenting upon the merit of the case, applicant deserves bail.

Accordingly, bail application is allowed.

Let applicant Raju be released on bail in the aforesaid case crime on his furnishing a personal bond and two reliable sureties and filing an undertaking to the satisfaction of the court concerned subject to the following conditions:-

- 1. The applicant shall not tamper with the evidence or threaten the witnesses.*
- 2. The applicant shall co-operate with the trial and shall not seek any adjournment on the dates fixed for charge, evidence when the witnesses are present in the court, statement under Section 313 Cr.P.C. and argument.*
- 3. During trial, he shall not indulge in any criminal activities or case.*

In breach of any condition enumerated above, Trial Court shall be at liberty to treat it as abuse of liberty of bail and pass appropriate orders in accordance with law."

10. Further, co-accused Smt. Mausammi @ Triveni mother of the applicant was granting bail by co-ordinate Bench of this Court on 11.4.2022 in Crl. Misc. Bail Application No. 20628 of 2020. Perusal of the bail order dated 11.4.2022 shows that she was also released on bail on the basis of the argument advanced by learned counsel for the co-accused Smt. Mausammi @ Triveni. The bail order dated 11.4.2022 is extracted below:-

"Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material on record.

By means of this application, the applicant who is involved in Case Crime No. 39 of 2019, under sections 302 IPC, Police Station Shikandra, District Agra and is in jail since 3.7.2019, is seeking enlargement on bail during the trial.

Learned counsel for the applicant submits that the first information report of the present case was lodged in pursuance of the application given under section 156(3) Cr.P.C. He further submits that the present accused applicant is quiet innocent and he has been falsely implicated in the present case. Initially the matter was investigated and the police submitted the final report. Later on the matter was further investigated and the police has submitted charge-sheet against the applicant on the basis of same evidence on which earlier final report was submitted. He has submitted that deceased's dying declaration was tutored one and she has given dying declaration in greed of property of Naniya Sasur Bhoopat. He has submitted that Bhoopat whose property was distributed between the Kela and Mausiya Saas Mausammi and her family. He next submitted that deceased wanted share in the property by Bhoopat and the property was distributed through a Will by Bhoopat to her two daughters one is Mausammi and other is Kela (mother-in-law of the deceased). He has submitted that to put pressure on Bhoopat deceased threatened to commit suicide and she had poured kerosine oil over her body herself and set fire. He next submitted that the applicant had no role whatsoever in the commission of alleged incident.

It is submitted by learned counsel for the applicant that similarly placed co-accused Mintu @ Amit and Raju have already been enlarged on bail by this Court by orders dated 6.8.2021 and 22.11.2021 passed in Criminal Misc. Bail Application Nos. 27220 of 2021 and 45996 of 2021, copy whereof have been submitted by the applicant, which are taken on record. He further submitted that since the role of the applicant is identical to that of co-accused Mintu @ Amit and Raju who have already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity.

The prayer for bail has vehemently been opposed by learned A.G.A. However, the aforesaid factual aspect of the matter has not been disputed by him.

Considering the submissions made by learned counsel for the applicant as well as learned A.G.A., this Court is of the view that the applicant has made out a case for grant of bail on the ground of parity.

In view of the above, let the applicant, Smt. Mausammi @ Triveni be released on bail in the aforesaid case on her executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the court concerned with the following conditions :-

(a) The applicant shall attend the court according to the conditions of the bond executed by her.

(b) 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 him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

It is further directed that the identity, status and residence proof of the sureties be verified by the authorities concerned before they are accepted.

In case of breach of any of the above conditions, the trial court will be at liberty to cancel the bail."

11. Therefore, from the perusal of bail orders of similarly placed co-accused shows that without assigning any reasons, they were released on bail merely on the basis of argument advanced by learned counsel for the co-accused persons.

12. Recently three Judges Bench of the Supreme Court in case of **Birjmani Devi Vs. Pappu Kumar and another** reported in [2022 4 SCC 497] deprecated the practice to allow bail application without assigning any reason and observed in paragraph 38 as follows-

"38. Thus, while elaborating reasons may not be assigned for grant of bail, at the same time an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail. It would be only a non speaking order which is an instance of violation of principles of natural justice. In such a case the prosecution or the

informant has a right to assail the order before a higher forum."

The Apex Court in the above mentioned case cancelled the bail granted to the accused on the ground that while granting bail High Court failed to assigned the reasons.

13. On 19.4.2022, the Apex Court in case of ***Ms. Y. Vs. State of Rajasthan and another in Crl. Appeal No. 649 of 2022 arising out of SLP (Crl.) No. 7893 of 2021*** in paragraph-17 observes as follows:-

"17. Apart from the general observation that the facts and circumstances of the case have been taken into account, nowhere have the actual facts of the case been adverted to. There appears to be no reference to the factors that ultimately led the High Court to grant bail. In fact, no reasoning is apparent from the impugned order."

The Supreme Court in above case also cancelled the bail granted to the accused by the High Court on the ground that High Court did not assign any reasons.

14. The Apex Court in case of ***Sabir Vs. Bhura @ Nadeem and another in Crl. Appeal No. 227 of 2022 (arising out of SLP (Crl.) No. 6941 of 2021)*** while setting aside the bail orders granted by the High Court observed as follows:-

"Since we find that no reasons have been given in substance and there is only narration of facts in the orders impugned, we are of the opinion that the orders impugned deserve to be set aside."

15. The Full Bench of this Court in case of ***Sunder Lal Vs. State*** reported in ***[1983 Crl J 736]*** declined to accept the argument that as co-accused has been admitted to bail, therefore, the then applicant should also be granted bail on the ground of parity.

16. Further, Division Bench of this Court in case of ***Chander @ Chandra Vs. State of U.P.*** reported in ***[1998 CRI.I. J. 2374]*** observed in paragraph 21 as follows:-

"21. Our answers to the questions referred are as follows :

1. If the order granting bail to an accused is not supported by reasons, the same cannot form the basis for granting bail to a co-accused on the ground of parity.

2. A judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains reasons, if the same has been passed in flagrant violation of well settled principle and ignores to take into consideration the relevant factors essential for granting bail.-

3. A Judge hearing bail application of one accused cannot cancel the bail granted to a co-accused by another Judge on the ground that the same had been granted in flagrant violation of well settled principles. If he considers it necessary in the interest of justice, he may, after expressing his views, refer the matter to the Judge who had granted bail, for appropriate orders.

4. If it appears that a bail order has been passed in favour of an accused on the basis of wrong or incorrect documents it is open to any Judge to initiate action for cancellation of bail."

17. Therefore, from the above discussion, it is apparent that parity cannot become the sole criteria to grant bail and if the bail granted to similarly placed co-accused persons without assigning any reasons then on the basis of such bail orders merely on the ground of parity, the bail application should not be allowed and parity can only be persuasive in nature and cannot be binding.

18. In the present case, in the dying declaration of the deceased, there is specific allegation against the applicant that he alongwith co-accused persons dragged the deceased in his house and poured kerosene oil on her and when she tried to manage to escape then after chasing her applicant and co-accused persons ablated her and post mortem report of the deceased further shows that she died due to ante mortem burn injuries and co-accused persons who were although released on bail by co-ordinate Bench of this Court but their bail orders shows that they were released on bail merely on the basis of the argument advanced by their respective counsels without assigning any reasons, therefore, in my view, it is not a fit case in which applicant can either be released on bail on merit or on the ground of parity.

19. Accordingly, the present bail application is **dismissed**.

Order Date :- 22.6.2022

AK Pandey