

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 3279 of 2022

**Applicant :-** Suresh Yadav

**Opposite Party :-** State Of U.P. Thru Addl.Chief Secy Deptt. Of Home

**Counsel for Applicant :-** Anupam Mehrotra, Anil Kumar Yadav

**Counsel for Opposite Party :-** G.A., Aakash Prasad, Amitav Singh, Naved Ali, Vikas Vikram Singh

**Hon'ble Dinesh Kumar Singh, J.**

1. The present application under Section 439 Cr.P.C. has been filed seeking bail in Case Crime No.366 of 2019, under Sections 302, 201, 147, 148, 149, 323, 120-B, 216 IPC, Police Station Harchandpur, District Raebareli.

2. Accused-applicant is the owner of Somu Dhaba at Raebareli. Allegations against the accused-applicant and other co-accused are that on 9.10.2019 when the deceased along with his friends went to have meal at Somu Dhaba, some altercation took place and the accused-applicant and other co-accused badly assaulted the deceased and threw his dead body at some distance to give the incident as an accident. It is alleged that CCTV footage of the Somu Dhaba and the area recorded between 10 PM to 1 AM were deleted.

3. Sri Anupam Mehrotra, learned counsel for the accused-applicant has submitted that even after lapse of more than two years since 10.10.2019, charges have not been framed and the trial has not commenced. He has further submitted that there is no likelihood of the trial commencing in near future. Accused-applicant can not be kept under trial for an indefinite period. In this regard, he has placed reliance on the following judgements of the Supreme Court:-

*“Dipak Shubhash Chandra Mehta v. Central Bureau of Investigation, (2012) 4 SCC 134;*

*Mehmood Mohammed Sayeed vs State Of Maharashtra, (2002) 10 SCC 677;*

*State, CBI/SPE, New Delhi Vs. Pal Singh and another, (2001) 1 SCC 247; and*

*Sunil K. Sinha Vs. State of Bihar, (1998) 5 SCC 607”*

4. On merit, learned counsel for the accused-applicant has submitted that the FIR was registered on the compliant given by the father of the deceased, Pradeep Kumar Singh and as per GD entry of the Police Station, Harchandpur, when the said FIR was lodged, Pradeep Kumar Singh was accompanied by Raj Kumar Singh, Vasudev Singh and Suresh Singh. He has also annexed photocopy of the GD entry in this respect.

5. The inquest proceedings were conducted between 1.30 PM to 3.15 PM. Raj Kumar Singh, one of the inquest witnesses, was also present when the FIR was lodged. In the inquest report, the inquest witnesses stated that the deceased died because of the injuries sustained by him in the fracas at Somu Dhaba and made no mention that the deceased was assaulted or that the deceased died at Garhi Khas, Raebareli, which is about 15 Kms. away from Somu Dhaba. On 10.10.2019 itself, the post-mortem of the deceased was conducted and the following ante-mortem injuries were noted on the body of the deceased:-

*“1. Contused swelling of 20 cm x 12 cm on left side of head just above left ear.*

*2. Lacerated wound of 01 cm x 01 cm on left side of head 06 cm above from mid of left eye brow x bone deep.*

*3. Lacerated wound of 01 cm x 01 cm c bone deep on top of head 06 cm back from injury no.(2).*

*4. Abrasion of 11 cm x 04 cm on right side of face 03 cm medial from Rt. Ear Tragus.*

*5. Abrasion of 30 cm x 05 cm on back of Rt. Hand and fore arm upto elbow.*

*6. abrasion of 12 cm x 05 cm on rt. Side of neck 04 cm below from Rt. Ear pinna.*

*7. Abrasion of 11 cm x 07 cm on medial aspect of left elbow joint extending to arm and forearm.*

*8. Contused swelling of 10 cm x 05 cm on medial aspect of left ankle (mall column).*

*9. Multiple contusion in area of 30 cm x 15 cm over back of chest raining from 12 cm x 02 cm to 07 cm x 02 cm.*

*10. Abrasion of 06 cm x 0.5 cm on Rt. Side chest 06 cm below from Rt. Nipple.”*

6. Cause of death was shock and hemorrhage due to ante-mortem injuries.

7. Learned counsel for the accused-applicant has submitted that the FIR is not true account of the incident inasmuch as there is no mention in the inquest report that the deceased was assaulted or that the deceased died at Garhi Khas, Raebareli, whereas in the FIR it was stated that the deceased was killed and his dead body was thrown at the godown near Garhi Khas.

8. First statement of Raj Kumar Singh, P.W.-12 was recorded on 23.10.2019, who was also the inquest witness and was present at the time when the FIR was lodged. In the statement, it was said that he was a friend of the father of the deceased/complainant and on 10.10.2019 upon receiving information of death of Ravi, son of the complainant, he rushed to the hospital, where he became an inquest witness and he gave his opinion about the death to the police. He did not say that he was an eye witness to the incident. However, on 24.12.2019 after lapse of almost three months since the date of alleged incident, second statement of Pradeep Kumar Singh was recorded under Section 161 Cr.P.C., wherein he said that after a few days, he came to know that Raj Kuamr Singh was an eye witness to the incident at Garhi Khas, which had taken place in the night of 9.10.2019 and, thereafter, he approached Raj Kumar Singh, who told him about the incident.

9. Second statement of Raj Kumar Singh, P.W.-12 was recorded on 24.12.2019 under Section 161 Cr.P.C., in which he claimed that in the night of 9.10.2019 at around 12 AM, while passing through the godown near Garhi Khas, Raebareli in his Scorpio vehicle, he saw that two four wheelers were parked on the left side of the road and a bullet motorcycle was lying there. Several persons were beating up a man with rods and upon having a close look, he saw that Suresh Yadav, the present accused-applicant, Arikrit Yadav, son of the

accused-applicant, Ramesh Yadav, cousin of the accused-applicant, along with 10-12 persons were present there. Raj Kumar Singh was abused and chased by these persons carrying stick and rod and he got scared and fled away in his vehicle and reached his village. Out of fear, he did not tell anyone about the incident and when he came to know about the death of Aditya Pratap Singh alias Ravi on 10.10.2019, he realized that Aditya Pratap Singh alias Ravi was murdered by those very persons, namely, Suresh Yadav, Arikrit Yadav, Ramesh Yadav and 10-12 other persons. It was further said that he apprehended that his vehicle might have been seen by the police, which may implicate him in the case for no reason and, therefore, he had not said anything so far. It was further said that he did not know as to how Pradeep Kumar Singh came to know that he knows about the incident, but on the insistence of Pradeep Kumar Singh, he felt that the truth must now be told and he had, therefore, disclosed to Pradeep Kumar Singh what was seen by him that night i.e. on 9.10.2019.

10. Learned counsel for the accused-applicant has also submitted that second statement of Raj Kumar Singh under Section 161 Cr.P.C. dated 24.12.2019 is manifestly contrary to his first statement recorded under Section 161 Cr.P.C. dated 23.10.2019 and the second statement is nothing but an after thought attempt on behalf of the prosecution to falsely implicate the accused-applicant and other co-accused.

11. Learned counsel for the accused-applicant has further submitted that another witness, Indramani Singh, P.W.-10 in his statement recorded under Section 161 Cr.P.c. on 6.11.2019 had categorically said that the present accused-applicant was at the Somu Dhaba and was not part of the alleged chase of Aditya Pratap Singh alias Ravi from Somu Dhaba to Garhi Khas. He has, therefore, submitted that there is glaring contradictions in the version of Raj Kumar Singh, P.W.-12 and Indramani Singh, P.W.-10.

12. From the statement of Indramani Singh, P.W.-10, it would be evident to know that the accused-applicant was not part of the chase

and, therefore, the accused-applicant has committed no offence and he has been falsely implicated in the crime.

13. Learned counsel for the accused-applicant has further submitted that police after completing the investigation, filed charge sheet no.1 of 2020 on 25.12.2019 under Sections 302, 201, 147, 148, 149, 323, 120-B, 216 IPC. This charge sheet does not accompany the FSL report and despite several reminders sent for sending FSL report, the FSL report has not been sent and the same would be filed in the Court along with supplementary charge-sheet. It is, therefore, submitted that the charge sheet has been filed without proper investigation and without completing the investigation, charge sheet has been filed to implicate the accused-applicant. It is also submitted that because of the intervention of political and executive authorities of the State, the accused-applicant has been implicated falsely without there being any evidence in support thereof and he has been languishing in jail for more than two years and, therefore, he is entitled to be enlarged on bail.

14. Learned counsel for the accused-applicant has further submitted that accused-applicant has been in public life and is a member of the Samajwadi Party and the District General Secretary, Raebareli of a reputed organization of the industrialists/traders, namely, Uttar Pradesh Udyog Vyapar Pratinidhi Mandal. Because of his political affiliation, business and rivalry at Raebareli, he has been falsely implicated.

15. In respect of other cases registered against the accused-applicant i.e. 1. Case Crime No.78 of 2017, under Sections 147, 148, 149, 504, 506, 342, 392 and 411 IPC; 2. Case Crime No.500 of 2016, under Sections 336, 504, 506, 427 IPC; and 3. Case Crime No.62 of 2016, under Sections 147, 148, 504, 427, 323, 457, 506 and 354 IPC, it has been submitted that in the first and second offences, accused-applicant has been granted bail and in the third offence, final report dated 18.9.2016 was filed for the closure of the case as no evidence was found to support the accusations made therein.

16. Learned counsel for the accused-applicant has further submitted that the police has not only filed incomplete charge sheet dated 25.12.2019, but also the case has been committed to the court of sessions in utter violation of Section 209 read with Section 207 Cr.P.C. It is further submitted that the trial can not proceed, if there has been violation of Section 209 read with Section 207 Cr.P.C. and the accused-applicant has been in jail for more than two years. There is violation of the fundamental rights of the accused-applicant guaranteed under Article 21 read with Articles 14 and 19(1)(g) of the Constitution of India.

17. On the other hand, Sri Ashwani Kumar Singh, learned AGA and Sri Vikas Vikram Singh, learned counsel for the complainant have opposed the bail application and have submitted that during the course of investigation, the eye witnesses, Indramani Singh and Agney Pratap Singh have specifically stated that the present accused-applicant, his son, Arikrit Yadav, Sarvesh Yadav, Ramesh Yadav, R,K, Yadav and 4 to 6 other persons assaulted the deceased, but anyhow he could escape from there and ran away on his motorcycle and went towards Tripula Crossing. It has further been said that when the deceased was again coming from Tripula Crossing and going in front of Somu Dhaba towards Saras, the accused persons present at Somu Dhana tried to stop him and assault him again. However, when they could not succeed in their endeavour, the accused persons chased the deceased in two cars; one white Tata Safari and one white Scorpio. This incident has been captured in CCTV footage of the area. The present accused-applicant was sitting in Tata Safari Car bearing No.UP33 Z 8100. The accused-applicant has also in his confessional statement accepted this fact.

18. It has also been submitted that there is sufficient evidence available against the accused-applicant and other co-accused. Accused-applicant is the main architect of the crime. It has further submitted that the police personnel present at Tripula Crossing in their statements, had said that some people came in two four wheeler

vehicles and inquired from them that whether any Bullet motorcycle had gone that side and when the personnel said that Bullet motorcycle had gone on a particular side, all the persons sitting in the four wheeler vehicles went to that side. It is also submitted that this incident has come in the CCTV footage that bullet motorcycle driven by the deceased was being chased by the two white four wheeler vehicles of the accused.

19. It has further been submitted that there is sufficient evidence available in the form of CCTV footage and eye witnesses, and no interference has been made either by the political or by the executive authorities of the State in the free and fair investigation. It has also been submitted that accused have got all the papers, which have been filed by the police. There is no prejudice caused to them. The accused will have all the papers before the charges are framed and there is no violation of the fundamental rights of the accused-applicant as alleged or otherwise. The accused-applicant and other co-accused have committed gruesome murder of a young man in a most ghastly manner and looking at the heinousness of offence, evidence available against the accused-applicant, who wanted to teach a lesson in order to establish his hegemony in the area, this Court may not enlarge the accused-applicant on bail.

20. This Court called for a report from the Sessions Court regarding the status of the trial and vide a detailed report dated 11.4.2022, it has been informed to the Court that several accused have not appointed their Lawyers. Accused were offered amicus curiae, but they have refused to accept the amicus curiae. Accused are lodged in different jails. Many accused have filed discharge applications and they are not cooperating in the trial. The prosecution has been directed to make available all the evidence collected by the police during the course of investigation to the accused, and the Court will decide the discharge applications expeditiously after hearing the accused and the prosecution. It is also said that if required, day-to-day trial shall be conducted to conclude the same expeditiously.

21. I have considered the submissions advanced on behalf of the learned counsel for the accused-applicant as well as by the learned AGA and learned counsel for the complainant and perused the record.

22. This Court having considered the gravity of offence, the manner in which it has been committed, and the evidence available on record, does not consider that the accused-applicant is entitled to be enlarged on bail at this stage. The accused-applicant is the owner of the Somu Dhaba, where in a fracas, the deceased was beaten and when anyhow he could escape from there on his motorcycle and thereafter he came again, he was allegedly chased by the accused-applicant and other co-accused in two four wheeler vehicles and thereafter he was hit by one of the vehicle and then allegedly he was assaulted and killed in a most gruesome manner, which is evident from the post-mortem report.

23. From the report of the trial court dated 11.4.2022, it appears that the accused-applicant and other co-accused are not cooperating in the trial and they want to linger on the trial. When the accused are not cooperating in the trial and the accused-applicant is accused of heinous offence of a gruesome murder of a young man in a most dastardly manner, this Court does not find that it is fit case where the accused-applicant should be enlarged on bail. The accused-applicant, who allegedly along with the other co-accused has committed heinous offence, can not complain of violation of Article 21 of the Constitution of India when he himself is not cooperating in early conclusion of the trial.

24. In view thereof, this Court does not find any ground to enlarge the accused-applicant on bail at this stage.

25. Bail application is accordingly *rejected*.

( Dinesh Kumar Singh, J.)

**Order Date :-** 29<sup>th</sup> April, 2022

Rao/-