

Court No. - 10

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1751 of 2022

Applicant :- Dr. Vijay Kumar

Opposite Party :- State Of U.P. Thru Prin.Secy.Home

Counsel for Applicant :- Nadeem Murtaza, Anupam Verma, Pankaj Verma, Vijay Vikram Singh, Vishnu Kumar Mishra

Counsel for Opposite Party :- G.A., Aradhana Chaturvedi, Ashish Raman Mishra

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri Vijay Vikram Singh, learned counsel for the accused-applicant, Sri Rao Narendra Singh, learned A.G.A. for the State-respondent and Sri Ashish Raman Mishra, learned counsel for the complainant.

2. The present application under section 439 Cr.P.C. has been filed seeking bail in FIR No. 016 of 2015, under sections 147, 148, 149, 364, 302, 201 & 216 I.P.C., Police Station-Badosari, district-Barabanki registered against the accused-applicant and other co-accused.

3. The accused-applicant was a sitting Member of the Legislative Assembly from Bansagaon constituency of Gorakhpur district. He had also unsuccessfully contested the election of Member of Parliament from Bahraich Parliamentary Constituency in the year 2014. The co-accused and wife of the present accused-applicant was posted in district-Bahraich as District Inspectors of Schools in the year 2014.

4. The allegations in the F.I.R. are that the accused-applicant and his wife had taken an amount of Rs. 3,50,000/- from the deceased, son

of the complainant to secure a government job. However, despite the assurances, no government job was ever offered to the deceased, Shikhar Srivastava. The deceased started demanding his money back. The father of the deceased also met the accused-applicant and his wife, who assured him that either the deceased would be given a government job or they would return the money back.

5. On 19-01-2015 at around 05.45 p.m., the deceased had come to Lucknow after he had received a call from the accused-applicant for refund of the due amount. The deceased reached Lucknow, but, he did not return back home and his mobile phone was found switched off. The younger son of the complainant/younger brother of the deceased went to the official residence of the accused-applicant at Nishatganj, Lucknow where the servants of the accused-applicant informed him that the accused-applicant, his wife and 4-5 other persons had forcibly taken the deceased in the car. The younger son of the informant, Shivam Srivastava approached the police station and gave a written complaint on which the Sub. Inspector, Manoj Kumar went to the house of the accused-applicant alongwith Shivam Srivastava. The Sub. Inspector, Manoj Kumar tried to contact the accused-applicant, his wife, but, their mobile phones were found switched off. Thereafter, the Sub. Inspector enquired from the gunner of the accused-applicant on mobile phone and also made enquiries from the servants present at the

residence of the accused-applicant. The servants assured the Sub.Inspector, Manoj Kumar and Shivam Srivastava that they would be able to meet the deceased next morning at 08.30 A.M. On this assurance, the younger son, Shivam Srivastava came back to Bahraich. On the very next day i.e. 20-01-2015 at around 08.20 a.m., the dead body of the deceased was found lying at road side at Badosari, Ramnagar, district-Barabanki. The complainant was given information by the police regarding dead body of his son.

6. The inquest of the deceased was conducted on 20-01-2015 and the inquest witnesses had opined the cause of death of the deceased due to Antemortem injuries, which could have been caused by assaulting him mercilessly.

7. The post-mortem of the deceased was conducted on the same day. The post-mortem report of the deceased would suggest the following Ante-mortem injuries on his body :-

ANTEMORTEM INJURIES

"1. Lacerated wound -23 CM x 7 CM bone deep, irregular margins on the left side of the head starting just lateral to the left eye upwards.

2. Left ear pinna is amputated and missing, amputated area comprising to 4 cm x 3 cm bone deep.

3. Contusion in an area of 14 cm x 8 cm involving forehead and both upper eyelids.

4. Lacerated wound 3 cm x 1 cm, muscle deep over right side of head, 4 cm above right ear.

5. Abraded contusion in an area of 10 cm x 35 cm involving whole of back just below neck.

6. Lacerated wound 4cm x 1 cm muscle deep present just above natal cleft.

7. Incised wound 3 cm x .5 cm. muscle deep tailing towards left gluteal

region, 7 cm above natal cleft.

8. Abraded contusion in an area of 13 cm x 7 cm present over ant. Aspect of Rt. Shoulder.

9. Abraded contusion in an area of 11 cm x 6 cm present over outer Aspect of left arm 7 cm below Lt. Shoulder.

10. Abrasion 9 cm x 5 cm over right knee.

11. Abrasion 11 cm. x 6 cm. over left knee

On opening- Ecchymosis present underneath, above mentioned injuries. There is fracture of 4th,5th,6th and 7th ribs on right side."

8. The cause of death of the deceased was due to hemorrhage and shock as a result of antemortem injuries.

9. The investigation of the case was carried out by the local police and the police was making efforts to arrest the present accused-applicant, his wife and other co-accused. The Investigating Officer moved an application to the Chief Judicial Magistrate, Barabanki on 28-01-2015 for issuance of non-bailable warrants and for initiation of proceedings under section 82 Cr.P.C.

10. The Chief Judicial Magistrate, Barabanki vide order dated 28-01-2015 issued non bailable warrants against the accused persons and on 03-02-2015, the proceedings under section 82 Cr.P.C. were also initiated.

11. When investigation of the case was being carried out by the police, an order dated 05-02-2015 was passed by the Deputy Secretary(Home), Section-4, Civil Secretariat, Lucknow for transferring the investigation of the case from local police to C.B.C.I.D. under the influence of the present accused-applicant and other co-accused persons, being sitting M.L.A. and having good

political connections. The Deputy Secretary (Home), passed an order for transferring the investigation from civil police to C.B.C.I.D. on recommendation of the then leader of opposition at Vidhan Sabha, Sri Swami Prasad Maurya, who on his letter head dated 27-01-2015 forwarded the application of the present accused-application for transferring the investigation of the case to the C.B.C.I.D. On the said letter of Sri Swami Prasad Maurya, the Principal Secretary of the then Hon'ble Chief Minister of Uttar Pradesh, directed the Principal Secretary(Home) to pass order for transferring the investigation to C.B.C.I.D..

12. The complainant filed a Writ Petition bearing no. 701(M/B) of 2015 impugning the order dated 05-02-2015 transferring the investigation to C.B.C.I.D. and the Division Bench of this court vide order dated 22-08-2017 allowed the said writ petition and held that the investigation of the case from local police to C.B.C.I.D. was transferred on the influence of the accused persons with the assistance of the then opposition leader, Sri Swami Prasad Maurya, under the political influence. The Division Bench quashed the order dated 05-02-2015, and the Superintendent of Police, Barabanki was directed to ensure that the investigation of the case was carried out in a fair and proper manner by the Investigating Officer of the local police, and further, to ensure that the police report be submitted in the competent court within six weeks from production of a certified copy of the order.

13. Despite the aforesaid order dated 22-8-2017 passed by this court, the accused-applicant, his wife evaded the arrest. The complainant filed a contempt petition before this court alleging disobedience of the order passed by the Division Bench of this court dated 22-08-2017, and because of the order passed in the contempt proceedings, the accused applicant could be arrested only on 01-02-2019, though he was the prime named accused in the F.I.R. in question and non bailable warrants dated 28-01-2015 were issued and the proceedings under sections 82 & 83 were initiated against him. It is also to be noted that there was no order of protection from arrest in his favour, but, he could evade his arrest for four long years in a case of abduction, murder and destruction of evidence.

14. During the course of investigation, it could be revealed that co-accused, Mradula Anand and the deceased were having illicit relations. In his confessional statement given to the police, the accused-applicant said that when he came to know about the illicit relations between the deceased and his wife, Mradula Anand, then he tried to reason the deceased through co-accused, Amit, Rinkoo and Sangam, who warned the deceased not to have any relation with co-accused, Mradula Anand. However, the deceased did not stop, and then the accused-applicant asked his wife, Mradula Anand to call the deceased on the date of the incident and when he reached, he was killed with bricks and stones and his dead

body was thrown away. On the pointing out of the accused-applicant, a Safari Car in which the dead body was carried away after murdering the deceased, was recovered.

15. During course of the investigation, the mudguard of Safari Car was found near the dead body of the deceased, which was recovered on the pointing out of the accused-applicant. The mudguard of the said Safari Car was sent to the Forensic Laboratory for examination and the Forensic Science Laboratory in its report dated 10-08-2016 opined that the mudguard belonged to Safari Car of the accused-applicant having Registration No. UP 65 AU 9999.

16. The two servants present in the house of the accused-applicant namely Saddam and Subhash in their statements recorded under section 161 Cr.P.C. stated that the deceased was forcibly taken away on 19-01-2015 by the present accused-applicant, his wife, Driver, Amit and co-accused persons, Rinkoo and Sangam between around 08.30 to 09.00 P.M. from the accused-applicant's official residence. Thereafter, the accused-applicant, his wife, Driver, Amit and co-accused, Rinkoo and Sangam came back around 02.30 A.M., and after sometime, they again went with their children with some luggage.

17. It is alleged that after committing murder of the deceased, the accused applicant and his family members left Lucknow and went to Gorakhpur. On request of the accused-applicant's

gunners, Master Ram Singh and Toofani Ram, one Rajendra Kumar, Block Pramukh gave shelter to the accused-applicant and his wife on 21-01-2015 in Gorakhpur after they reached there from Lucknow.

18. It is further stated that said witness, Rajendra Kumar was told about the murder of the deceased. Sri Mukthar Ali, Driver of co-accused, Mradula Anand said that he had seen the deceased coming to the office of the co-accused and deceased would sit with the co-accused, Mradula Anand for a long time. The police has also collected the call details report of the deceased and co-accused, Mradula Anand, which would show that they used to talk for a long duration and they would make calls to each other regularly for several times in a day. From 01-05-2014 to 29-08-2014, the deceased and co-accused had spoken over their mobile phones 198 times.

19. The police has also collected the railway booking chart, which would show that the co-accused, Mradula Anand and the deceased travelled from Lucknow to New Delhi together in one coupe.

20. The bail applications of co-accused, Amit Kumar, Mradula Anand and Rinkoo were rejected by this court by the orders passed on their bail applications, copies of which have been placed on record alongwith the Counter Affidavit filed on behalf of the complainant.

21. Sri Vijay Vikram Singh, learned counsel for the

accused-applicant however, submits that the accused applicant has been in jail for more than three and half years and trial has not yet progressed.

22. This court therefore, vide order dated 26-07-2022 called for a report from the trial court regarding the reasons for delay in the trial. Learned Trial Judge, Additional District/Special Judge, M.P./M.L.A., Barabanki has submitted a detailed report dated 06-08-2022. The said report would suggest that co-accused-Mradula Anand, wife of the accused-applicant was granted Short Term Bail on medical ground for period of four months vide order dated 23rd March,2021 passed in Bail No. 14769 of 2021, and after expiry of period of four months, the co-accused, Mradula Anand was directed to surrender before the trial court on 29-07-2022. However, she did not appear and after taking the short term bail for four months, on each and every date, the co-accused had been seeking adjournment on the ground of one pretext or other. In the meantime, this court vide order dated 29-07-2022 had again given one month more time for medical treatment to the co-accused-Mradula Anand, and her short term bail has been extended upto 31-08-2022. She has been directed to surrender before the trial court on 31-08-2022. The co-accused, Nand Kishore @ Rinkoo had filed an application under section 227 Cr.P.C. and the other co-accused have also filed the similar applications. The said applications were

posted for disposal on 08-08-2022. Because the co-accused, Mradula Anand, wife of the present accused-applicant, has been evading the process of the court on one pretext or other, therefore, the charge has not yet been framed.

23. This court is of the view that the accused can not take advantage of their own wrongs. If they do not cooperate in the trial, they cannot complain of delay in the trial.

24. Sri Vijay Vikram Singh, learned counsel for the accused-applicant has also submitted that co-accused, Rinkoo @ Nand Kishore has been granted bail by the Supreme Court vide order dated 25-10-2021 and therefore, the present accused-applicant may also be enlarged on bail.

25. I have considered the submissions advanced on behalf of Sri Vijay Vikram Singh, learned counsel for the accused-applicant, Sri Rao Narendra Singh, learned A.G.A. for the State-respondent and Sri Ashish Raman Mishra, learned counsel for the complainant.

26. The accused-applicant is a resourceful person as is evident from the facts narrated above. He could evade his arrest for four long years in the present case. He is the main accused. He could manage transfer of the investigation from civil police to C.B.C.I.D. But, for the intervention by this court, he could have managed the investigation as well. The witnesses are his two servants, one who gave him shelter at Gorakhpur as well as the Driver besides other witnesses. Considering the

status of the accused-applicant, who was an M.L.A. and contested the election for Lok Sabha and the status of witnesses, who come from the poor background, the prosecution apprehension of influencing the witnesses and tampering with the evidence by the accused-applicant cannot ruled out. The accused applicant could not have been arrested had this court not intervened in the contempt proceedings as he could evade his arrest for four years.

27. The accused are not allowing the trial court to proceed with the trial. The co-accused, Mradula Anand after her bail application got rejected by this court, could get short term bail on medical ground and on one pretext or other, she is not appearing before the trial court so that the trial could not proceed as is evident from the report submitted by the learned trial court.

28. In view thereof, without commenting on the merit of the case, this court finds substance in the arguments of the prosecution that the accused-applicant will be in a position to influence the witnesses and tamper with the evidence if he is released on bail. The accused themselves are responsible for not allowing the trial to proceed. The case of the present accused-applicant is different on facts with the case of co-accused, Rinkoo, who has been granted bail by the Supreme Court and therefore, he cannot claim parity.

29. In view thereof, I am of the opinion that the accused-applicant is not entitled to be enlarged on

bail at this stage. The bail application of the accused-applicant, Dr. Vijay Kumar is hereby ***rejected.***

Order Date :- 10.8.2022

AKS