

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31852 of 2022

Applicant :- Syed Asim Ali

Opposite Party :- State of U.P.

Counsel for Applicant :- Imran Ullah, Mohd. Aslam Azhar Khan, Raj Dhar Mishra

Counsel for Opposite Party :- G.A., Manoj Kumar Tewari, Vinod Kumar Maurya, Yogesh Pratap Singh

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Sri Mohd. Khalid, learned counsel for applicant and Sri P.K. Giri, Additional Advocate General assisted by Sri Pankaj Kumar, learned AGA for State.
2. Applicant-Syed Asim Ali has approached this Court by way of filing present bail application seeking enlargement on bail in Case Crime No. 0319 of 2019, under Sections 302, 120B IPC and 66 of Information Technology Act, Police Station Naka Hindola, District Lucknow.
3. This is a case of extreme communal hatred. In the year 2016 named two accused, i.e., Mohammd Mufti Naeem Kazmi and Imam Maulana Anwarul Haq, have issued a Ferman (Order) that they will pay hefty amount of Rs. 51 lacs and Rs. 1.5 crore respectively to the person, who will cause death of deceased, who allegedly made comments with regard to Paigamber of a particular religion.
4. Initially FIR was lodged on 18.10.2019 by wife of deceased against unknown persons and two named accused that on fateful day, two unknown assailants came at the office of deceased in presence of Complainant. At that time one Saurashtra Singh was also present. Complainant left the office, however, when she returned back after some time since there was no voice of conversation, she found that her husband died due to multiple stab injury and firearm injuries. She also declared that she could recognize the two unknown assailants.
5. As per post mortem report, immediate cause of death was shock and haemorrhage due to multiple ante mortem injuries. According to ante mortem injuries, there were firearm injuries as well as about half dozen stab wounds all over body of deceased. There were incised wounds (cut throat also). As such it

was a case of brutal day light murder.

6. According to record a detailed investigation was carried out and not only two assailants were identified but a large conspiracy was also detected and finally charge sheet was filed against 13 accused persons including applicant before this Court.

7. It is also brought on record that co-accused, Mohd. Jafar Sadiq Kuppelur, has been granted bail by this Court vide order dated 14.07.2023 while bail application of co-accused, Faizan Member has been rejected vide order dated 12.03.2024 and therein direction was passed by a Coordinate Bench to conclude the trial expeditiously. It is also brought on record that earlier on a transfer application filed by accused persons, trial was transferred from Lucknow Judgeship to Prayagraj Judgeship by an order passed by Supreme Court. It is also informed that out of 35 proposed witnesses till date seven have been examined, whereas applicant is in jail since 24.10.2019, i.e., for about 4 years and 5 months.

8. Learned counsel for applicant submits that applicant is not the main assailant and according to best evidence available with prosecution, he is a part of larger conspiracy that before occurrence there were repeated telephone calls between him and main assailants and in the confessional statements of main assailants, they were allegedly assigned role to applicant to provide legal aid to them in case they were arrested. Learned counsel refers the order dated 14.07.2023 passed by a Coordinate Bench of this Court whereby co-accused, Mohd. Jafar Sadiq Kuppelur was granted bail.

9. Per contra, learned Additional Advocate General appearing for State submits that accused persons have hatched a conspiracy and in a very planned manner deceased was brutally murdered. Applicant was assigned specific role to provide legal aid to main assailants in case they got arrested. There are call details soon before occurrence between assailants and applicant and as such he was actively involved in crime. He further refers that there are direction of this Court passed in order dated 12.03.2024 whereby bail of co-accused was rejected to proceed trial on day-to-day basis with periodical report to concerned District Judge and trial is proceeding.

10. I have considered the above mentioned rival submissions in referred factual and legal backgrounds and in view of established principle of jurisprudence of bail i.e 'bail is rule and jail is exception' as well as relevant factors for consideration of a bail application such as (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused;(vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; (viii) danger, of course of justice being thwarted by grant of bail etc, and that an order to grant or not to grant bail must assigned reasons (see Deepak Yadav vs State of U.P. (2022) 8 SCC 559, Manoj Kumar Khokar vs State of Rajasthan and Anr (2022) 3 SCC 501, The State of Jharkhand vs Dhananjay Gupta @ Dhananjay Prasad Gupta: Order dated 7.11.2023 in SLP(Crl) No.10810/2023, Shiv Kumar Vs The State of U.P. and Ors : Order dated 12.9.2023 in Criminal Appeal No.2782 of 2023), I am of considered opinion that present is not a fit case to grant bail to applicant mainly on following grounds:-

- (a) It is a case where deceased was subjected to extreme communal hatred and was eliminated by way of a brutal day light murder.
- (b) Not only multiple stabbed wounds were inflicted but deceased throat was also cut and there was a firearm injury also.
- (c) There are substantial evidence that applicant was involved in crime and was part of a larger conspiracy and specific role was assigned on him to give legal assistance to main assailants if they got arrested.
- (d) There are electronic evidence to the effect that applicant has called multiple times to main assailants soon before occurrence.
- (e) The main assailants were identified by two witnesses.
- (f) Considering the manner of assault and larger conspiracy there is reasonable apprehension of the witnesses being influenced.
- (g) There are direction passed by this Court to expedite trial and according to record out of proposed 35 witnesses, 7 have been examined.

11. In view of above discussion, the bail application is rejected.

12. However, considering that applicant is in jail since 24.10.2019, Trial Court concerned is directed to follow the direction passed by this Court to expedite trial while rejecting bail application of co-accused, Faizan Member in Criminal Misc. Bail Application No. 51563 of 2023, Neutral Citation No. 2024:AHC:43775.

13. The applicant will have liberty to approach this Court or Trial Court, as the case may be, afresh in case trial is not concluded within a period of one year or even before said period in the event of any substantial subsequent event.

14. Registrar (Compliance) to take steps.

Order Date :- 3.4.2024

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