

Mudassir vs State Of U.P. on 1 April, 2025

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44662

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6410 of 2025

Applicant :- Mudassir

Opposite Party :- State of U.P.

Counsel for Applicant :- Kuldeep Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Kuldeep Kumar, the learned counsel for applicant and the learned A.G.A. for State.
2. Perused the record.
3. Supplementary affidavit filed by the learned counsel for applicant in Court today, is taken on record.
4. This third application for bail has been filed by applicant-Mudassir seeking enlargement on bail in Case Crime No.194 of 2021, under Sections 452, 302, 34 I.P.C., Police Station Agauta, District Bulandshahr during the pendency of the trial, i.e., Sessions Trial No.517 of 2022 (State v. Amir and others), under Sections 302, 120-B, 452, 34, 404 I.P.C., Police Station Agauta, District Bulandshahr, now pending in the Court of Additional District and Sessions Judge, Court No.3, Bulandshahr

5. The first bail application of applicant, i.e., Criminal Misc. Bail Application No.9616 of 2022 (Mudassir v. State of U.P.) was rejected by this Court by a detailed order dated 12.04.2022 passed in Criminal Misc. Bail Application 6909 of 2022 (Shadab v. State of U.P.) along with two other bail applications.

6. Subsequent to above, applicant filed his repeat application for bail, which was registered as Criminal Misc. Bail Application No.48505 of 2022 (Mudassir v. State of U.P.) same was also rejected by this Court vide order dated 24.02.2023. For ready reference, the order dated 24.02.2023 is reproduced hereinbelow:-

"Heard Mr. A. Kumar Srivastava, the learned counsel for applicant and the learned A.G.A. for State.

This is a repeat application for bail filed by applicant Mudassir seeking his enlargement on bail in Case Crime No. 194 of 2021 under sections 452, 302 and 34 IPC, Police Station- Agauta, District Bulandshahr during pendency of trial.

The first bail application of applicant along with two other accused was decided by this Court by a detailed order dated 12.4.2022 in Criminal Misc. Bail Application No. - 6909 of 2022 (Shadab Vs. State of U.P.) , which is reproduced herein under:

"Heard Mr. N.I. Jafri, the learned Senior counsel assisted by Miss Nasira Adil, the learned counsel for applicants Shadab and Mudassir, Mr. Anand Pati Tiwari, the learned counsel for applicant Muzammil and the learned A.G.A. for State.

These applications for bail have been filed by applicants Shadab, Mudassir and Muzammil seeking their enlargement on bail in Case Crime No. 194 of 2021, under Sections 452, 302, 34 IPC, P.S. Agauta, District Bulandshahr, during the pendency of trial.

Perused the record.

Criminal Misc. Bail Application No. 6909 of 2022 (Shadab Vs. State of U.P.) came up for orders on 29.3.2022 and this Court passed following order:-

"Heard Mr. N.I. Jafri, learned Senior Counsel assisted by Mrs. Nasira Adil, learned counsel for applicant and learned A.G.A. for State.

At the very outset, learned A.G.A. submits that following bail applications filed by co-accused are already pending before this Court.

(i) Criminal Misc. Bail Application No. 9616 of 2022 (Mudassir Vs. State of U.P)

(ii) Criminal Misc. Bail Application No. 8663 of 2022 (Muzammil Vs. State of U.P) In view of above, connect aforementioned criminal misc. bail applications along with this application for bail.

Matter shall reappear as fresh on 12.4.2022 along with connected matters."

Pursuant to above order dated 29.3.2022, aforementioned bail applications stood connected and have, therefore, been listed together. Since all the bail applications arise out of same case crime number, they have been heard together and are now being disposed of finally by a common order.

Record shows that in respect of an incident, which is alleged to have occurred on 19.9.2021, a prompt F.I.R. dated 19.9.2021 was lodged by first informant Shabnam and was registered as Case Crime No. 194 of 2021, under Sections 147, 148, 149, 452, 302, 120B IPC, P.S. Agauta, District Bulandshahr. In the aforesaid F.I.R., seven persons namely Fariyad, Insad, Hamid Ali, Mujahid, Mudassir, Muzammil and Arif have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is that named accused have caused the murder of Sava, daughter of first informant aged about 10 years at her home, when she was all alone.

After registration of aforementioned F.I.R., Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr. P. C. The inquest (panchayatnama) of the body of the deceased was conducted on 19.9.2021. In the opinion of witnesses of inquest (panch witnesses), the nature of death of deceased was homicidal. Subsequent to above, the post mortem of the body of the deceased was conducted on 20.9.2021. In the opinion of Autopsy Surgeon, the cause of death of deceased was shock and haemorrhage due to ante mortem injuries. The Autopsy Surgeon found following ante mortem injuries on the body of the deceased:-

(1) Incised wound of size 7 cm x 2 cm x cavity deep present at front of neck, underneath trachea of large blood vessels found cut.

(2) Contusion of size 01 x 01 cm present at lower limb.

(3) Multiple lacerated wounds (8 in numbers) present over both temporo parietal and occipital region of skull from size 4 cm x 2 cm to 1 cm x 0.5 cm x muscle deep. On exploration of skull underneath haematoma present.

The Autopsy Surgeon further gave his independent medical opinion which reads as under:-

"There are no injuries on thighs and external genitalia. No bleeding from vagina. Hymen is ruptured. Not bleeding. Edges of hymen are healed. No fresh injury. Stool is passed, hence vagina and external genitalia are soaked with fecal matter. Final opinion is pending availability of F.S.L. Report. 2 vaginal smear slides are prepared. 2 vaginal & 2 vulval swabs are prepared and sealed for forensic examination."

Learned A.G.A. informs that samples taken from the body of the deceased have been sent for pathological examination on 4.10.2021. However, the F.S.L. report has yet not been received.

During the pendency of investigation, five of the named accused were arrested on different dates. In the course of investigation, Investigating Officer made certain recoveries, which are detailed herein under:-

(1) On 19.9.,2021, Investigating Officer recovered various articles from the place of occurrence. The recovery memo regarding above is on record at page 38 of the bail application of Shadab.

(2) The clothes of the victim (deceased) were recovered from named accused Mudassir on 25.9.2021. The recovery of the same is part of the case diary.

(3) The mobile phone of the deceased, and the knife, the knife used in the commission of the crime and blood stained clothes of accused Amir were recovered on 25.9.2021. The recovery memo of the same also found part of the case diary.

During course of investigation, Investigating Officer examined the following witnesses under Section 161 Cr. P. C.:

1. Informant Shabnam

2. Nabi Mohammad

3. Taj Mohammad

4. Tauheed

5. Munfed

6. Subhasg

7. Ravindra

8. Harendra

9. Fateh

10. Naushad

11. Haqiqat On the basis of above, complicity of certain other persons also came to surface. Consequently, not named accused Shadab was also arrested on 19.10.2021. Investigating Officer on the basis of above and other material collected by him during

the course of investigation ultimately submitted the charge sheet dated 6.10.2021, whereby Muzammil has been charge sheeted under Sections 302, 120 B IPC, Mudassir and Shadab have been charge sheeted under Sections 452, 302, 34 IPC and Amir has been charge sheeted under Sections 452, 302, 34, 404 IPC, whereas four of the named accused namely Fariyad, Inshad, Hamid Ali and Arif have been exculpated.

Mr. N.I. Jafri, learned Senior counsel assisted by Miss Nasira Adil, learned counsel for applicants Shadab and Mudassir submits that named and charge sheeted accused Muzammil and Mudassir and named, but not charge sheeted accused Mujahid are real brothers. Named accused Muzammil is the first husband of first informant Shabnam. Charge sheeted accused Shadab is the nephew of aforesaid three persons.

It is then contended by learned Senior counsel that though applicant Shadab is not named in the F.I.R., but a charge sheeted accused and applicant Mudassir is a named as well as charge sheeted accused, but they are innocent. Aforesaid applicants have been falsely implicated in above mentioned case crime number. Allegations made in the F.I.R. are false and concocted. As such, aforesaid applicants are being falsely prosecuted in above mentioned case crime number.

It is next contended that applicant Shadab is not named in the F.I.R. The first informant Shabnam was examined by the Investigating Officer on 19.9.2021 and thereafter on 22.9.2021. However, the first informant in her aforesaid statements has not nominated Shadab in the commission of the alleged crime. The complicity of aforesaid applicant has surfaced in the crime in question, in the statements of two eyewitnesses examined by the Investigating Officer namely Taj Mohammad and Tauheed. Perusal of the statements of aforesaid witnesses clearly goes to show that applicant Shadab has been implicated in crime in question on the basis of hear say evidence.

Learned Senior counsel further contends that applicant Mudassir is a named as well as charge sheeted accused. Present case is a case of circumstantial evidence and therefore same is to be considered in the light of parameters laid down by Apex Court for deciding a case based on circumstantial evidence in Sharad Birdhi Chand Sharda Vs. State of Maharashtra, 1984 SC, 1622. On the basis of above, he contends that upto this stage, there is no complete chain of events against applicant Mudassir. No motive can be attached to applicant Mudassir for committing the alleged crime. The incriminating circumstances gathered by Investigating Officer during the course of investigation against applicant Mudassir are not in proximity to time and situation of the occurrence. Even if said incriminating circumstances are proved, same shall not point at the guilt of applicant Mudassir.

It is lastly contended that applicants Shadab and Mudassir are of clean antecedents, inasmuch they have no criminal history to their credit except the present one. Applicant Shadab is in jail since 19.10.2021, whereas applicant Mudassir is in jail since 25.09.2021. As such, they have undergone more than six months of incarceration. He, therefore, contends that above named applicants are liable to be enlarged on bail. In case, aforesaid applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

Mr. Anand Pati Tiwari, learned counsel for applicant Muzammil has substantially adopted the arguments of Mr. N.I. Jafri, learned Senior counsel. According to Mr. Anand Pati Tiwari, learned counsel for applicant, Muzammil even though applicant Muzammil is a named and a charge sheeted accused, but he is liable to be enlarged on bail. Applicant Muzammil has been charge sheeted under Sections 302, 120 B IPC. On the aforesaid premise, it is thus urged by learned counsel that applicant Muzammil can be christened as a conspirator. Conspiracy is a closed door affair and is, therefore, subject to trial evidence. It is also submitted that applicant Muzammil is a man of clean antecedents, inasmuch as he has no criminal history to his credit, except the present one. Applicant Muzammil is in jail since 25.09.2021. As such, he has undergone more than six months of incarceration. He, therefore, contends that above named applicant is also liable to be enlarged on bail. In case, aforesaid applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. has opposed these applications for bail. Learned A.G.A. submits that applicant Shadab is not named but a charge sheeted accused, whereas applicants Muzammil and Mudassir are named as well as charge sheeted accused. He further submits that the deceased was a young girl aged about 10 years. Referring to the post mortem report of the deceased and the independent medical opinion expressed by the Autopsy Surgeon, learned A.G.A. contends that the manner in which the crime was committed and also the criminality committed by the accused including the applicants is by itself sufficient for denial of indulgence by this Court in their favour. Learned A.G.A. submits that during the course of investigation, certain recoveries have been made. The details of which have already been referred to herein above. The blood stained clothes of the deceased have been recovered from applicant Mudassir. Learned A.G.A. submits that above by itself is an incriminating circumstance and points at the guilt of the accused applicant Mudassir. As such, case of applicant Mudassir is clearly distinguishable from applicants Shadab and Muzammil. However, learned A.G.A. could not dispute the factual and legal submissions urged by learned Senior counsel for applicants Shadab and Mudassir and counsel for applicant Muzammil. Having heard learned counsel for applicants, learned A.G.A. for the state, upon perusal of material brought on record, nature of offence, evidence, complicity of the accused and accusation made, but without expressing any opinion on merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant Mudassir on bail. As such, the bail application of Mudassir is rejected. However, for the facts and reasons recorded above, the bail applications of applicants Shadab and Mudassir are liable to be allowed. Accordingly, bail applications of applicants Shadab and Mudassir are allowed.

Let the applicants Shadab and Mudassir involved in aforesaid case crime number, be released on bail on their furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice :-

- (i) The applicants shall file an undertaking to the effect that they will not tamper with the evidence and will not pressurize/intimidate the prosecution witnesses and will cooperate with the trial. The applicants shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this

condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicants is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against them in accordance with law."

While the bail applications of applicant was rejected the bail applications of other two accused were allowed.

Learned counsel for applicant submits that bail application of applicant was rejected only on the ground that clothes of deceased were recovered from applicant. According to the learned counsel for applicant, the said recital contained in the earlier order dated 12.4.2022 is factually incorrect. He has then invited the attention of Court to the recovery memo, which is at page 77 of paper book and on basis thereof he submits that it was blood stained clothes of applicant and not that of the deceased that were recovered on the pointing of applicant. On the above premise, learned counsel for applicant submits that once the foundation of bail rejection order is wiped out, applicant is liable to be enlarged on bail.

Per contra, the learned A.G.A. has opposed the prayer made by learned counsel for applicant. It is submitted that present case is a case of circumstantial evidence. The recovery of blood stained clothes of applicant on his pointing out is an incriminating circumstance which remains unexplained. He next submits that a typographical mistake has crept in the earlier order dated 12.4.2022. However, irrespective of above, the fact remains that blood stained clothes of applicant were recovered on his pointing out. The recital contained in the recovery memo of same has not been dislodged by applicant upto this stage. As such, no new or good ground is made out in present application for enlarging the applicant on bail. As such, applicant does not deserve any indulgence by this Court.

When confronted with above, the learned counsel for applicant could not overcome the same.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record as well as the complicity of applicant and accusation made coupled with the fact that the blood stained clothes of applicant were recovered on his pointing out which is an incriminating circumstance and the same having not been explained by applicant, but without making any comments on the merits of the case, applicant does not deserve any indulgence by this Court.

As such, the application fails and is liable to be rejected.

It is accordingly rejected."

7. Learned counsel for the applicant submits that though applicant is named and chargesheeted accused and facing trial before court below yet he is liable to be enlarged on bail. Applicant is in jail since 25.09.2021. As such he has undergone more than three years and six months of incarceration. The Police report in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant now stands crystallized. However, up to this stage no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial.

8. It is then submitted by the learned counsel for the applicant that the trial of the applicant has already commenced before court below. There are as many as 23 prosecution witnesses nominated in the chargesheet. However, up to this stage only 8 prosecution witnesses have deposed before court below. The trial is of the year 2022. In spite of the fact that the period more than three years has rolled by the trial of applicant has not yet concluded. In view of above circumstance, there is no likely hood of the trial getting concluded in near future. He therefore contends that in view of above and also the period of incarceration undergone by applicant, he is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall cooperate with trial.

9. Per contra, the learned AGA representing State - opposite party no.1 has vehemently opposed the prayer for bail. He submits that since applicant is a named and chargesheeted accused, therefore, he does not deserve any indulgence by this Court. Learned AGA then invited the attention of Court to the post mortem report of the deceased and with reference to same pointed out the ante mortem injuries on the body of deceased noted by the autopsy surgeon as well as the condition of the dead body of the deceased. He also contended that the blood stained of the applicant were recovered by the Investigating Officer on the pointing of present applicant.

10. On the above premise, the learned AGA contends that in view of above mentioned incriminating circumstances that have emerged against the applicant during the course of investigation, he does not deserve any indulgence by this Court. Apart from above, considering the nature and gravity of the offence and also the period of punishment provided for the same, the period of incarceration undergone by applicant is by itself not so sufficient a circumstance so as to enlarge the applicant on bail. It is thus contended by the learned AGA that no new, good or sufficient grounds has emerged so as to enlarge the applicant on bail. As such this repeat application for bail is liable to be rejected.

11. When confronted with above, the learned counsel for applicant could not overcome the same.

12. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that the objections raised by the learned AGA in opposition to this third application for bail could not be disclosed by the learned Counsel for applicant with reference to the record, therefore, irrespective of the various submissions urged by the learned counsel for applicant in support of this third application for bail but without making any comments on the merits of the case, this court does not find any new, good or sufficient ground so as to enlarge the applicant on bail. As a result, this third application for bail is liable to be rejected.

13. It is accordingly rejected.

Order Date :- 1.4.2025 /A.N. Mishra