

Allahabad High Court

Indraraj @ Chokhan vs State Of U.P. on 2 November, 2023

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2023:AHC:210603

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46108 of 2023

Applicant :- Indraraj @ Chokhan

Opposite Party :- State of U.P.

Counsel for Applicant :- Firdos Ahmad, Mahesh Kumar

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46683 of 2023

Applicant :- Ramchandra @ Bhagwan Ji

Opposite Party :- State of U.P.

Counsel for Applicant :- Mahesh Kumar, Firdos Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Mahesh Kumar, the learned counsel for applicants and the learned A.G.A. for State.

2. Perused the record.

3. These applications for bail have been filed by applicants-Indraraj @ Chokhan and Ramchandra @ Bhagwan Ji, seeking their enlargement on bail in Case Crime No. 215 of 2023, under Sections 147, 148, 307, 302, 504, 506 IPC, Police Station-Kokhraj, District-Kaushambi during the pendency of trial.

4. At the very outset, the learned counsel for applicants submits that the case of present applicants are similar and identical to that of named/charge sheeted co-accused Roopchandra @ Rupai, who has already been enlarged on bail by this Court vide order dated 09.10.2023. For ready reference, the order dated 09.10.2023 is reproduced hereinunder:-

"1. Counter affidavit filed by the learned counsel representing first informant in Court today, is taken on record.

2. Learned counsel for applicant submits that he does not wish to file rejoinder affidavit to the same.

3. Heard Mr. Mahesh Kumar, the learned counsel for applicant, the learned A.G.A. for State and Mr. Kamal Kishore Mishra, the learned counsel representing first informant.

4. Perused the record.

5. This application for bail has been filed by applicant-Roopchandra @ Rupai, seeking his enlargement on bail in Case Crime No. 0215 of 2023, under Sections 147, 148, 307, 302, 504, 506 IPC, Police Station-Kokhraj, District-Kaushambi during the pendency of trial.

6. Record shows that in respect of an incident, which is alleged to have occurred on 09.06.2023, a prompt FIR dated 09.06.2023 was lodged by first informant-Kamta Prasad (son of the deceased) and was registered as Case Crime No. 0215 of 2023, under Sections 147, 148, 307, 302, 504, 506 IPC, Police Station-Kokhraj, District-Kaushambi. In the aforesaid FIR, two persons namely - (1) Rupchandra and (2) Ramchandra have been nominated as named accused whereas four unknown boys and three unknown ladies have also been arraigned as accused.

7. The gravamen of the allegations made in the FIR is to the effect that on 09.06.2023, named accused Rupchandra and Ramchandra along with other not named accused, had formed an unlawful assembly to commit a grievous offence assaulted the father of the prosecutrix, his Mause and Sandeep. On account of the assault made by the accused persons, father of the first informant died on the spot whereas Mause of the first informant and Sandeep sustained injuries.

8. After above-mentioned FIR was lodged, 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 deceased was conducted. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as homicidal and the cause of death of deceased was said to be ante-mortem injuries. Thereafter, the post mortem of the body of

deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was said to be Coma as a result of ante-mortem head injuries. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"1. Contusion was hametoma 3 cm x 2.5 cm over Right Pace to oкупital Region about 5 cm above Right ear.

2. Contusion 2 cm x 1 cm over Right Hand."

8. The injured Ram Naresh was also medically examined. As per the medico legal examination report, he sustained following injuries as per his Medico Legal Examination report:-

"1. Swelling with Contusion 2 cm x 2 cm on Lt. force arm laterelly 4 cm above Lt. wrist joint KUO, adv. X-ray Lt. forearm Ap/Lat.

2. L/W 2 cm x 0.5 cm x 0.5 cm Lt. little finger medially at base, palmer side. Blood cast present.

3. c/o pain on left buttuck. No external injury seen."

9. Similarly, the injured Sandeep Kumar was also medical examined. He sustained following injuries:-

"1. Swelling 4 cm x 2 cm on Rt. side shoulder, 3 cm medial to Rt. shouder Jt. KUO, adv. X-ray Rt. Shoulder AP/Lat.

2. Contused swelling 3 cm x 3 cm on Rt. side Arm postero laterally 8 cm above Rt. elbow joint Reddish in colour. KUO, adv. X-ray Rt. Arm AP/Lat.

3. Abrasion 4 cm x 1 cm on Lt. forearm posteriorly vertically 7 cm below Lt. elbow Jt. Red in colour.

4. Contusion 1 cm x 1cm on Rt. Knee Jt. anterirly and Red in colour.

5. C/o Pain B/L Buttuck, No external injury seen."

10. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of following persons namely - (1) Roopchandra @ Rupai (applicant herein), (2) Ramchandra @ Bhagwanji, (3) Sanjay Kumar, (4) Imdraraj @ Chokhan and (5) Brijraj @ Badal is established in the crime in question. Accordingly, Investigating Officer submitted the charge sheet dated 20.06.2023 whereby aforementioned accused have been charge sheeted under Sections 147, 148, 307, 302, 504, 506 IPC.

11. Learned counsel for applicant submits that though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. It is next contended that as per the post mortem report of the deceased, the deceased had sustained two simple injuries i.e. contusion. According to the learned counsel for applicant, the occurrence giving rise to present criminal proceedings occurred on account of grave and sudden provocation. It was not the outcome of any calculated mens rea or any pre-planned act of the applicant. As such, the offence complained of shall not travel beyond 304(II) IPC inasmuch as, the same is covered under the 4th exception to Section 300 IPC. According to the learned counsel for applicant, the injuries sustained by the deceased are neither grievous nor fatal. As such, there was no intention with the accused to cause the death of the deceased. It is further submitted by the learned counsel for applicant that other two injured namely Ram Naresh and Sandeep have also not sustained any grievous or fatal injury. Both the injured have not got their X-ray done and therefore, the exact injury sustained by the injured cannot be discovered. According to the learned counsel for applicant, in the FIR, the author of injuries sustained by the deceased have been specified. The role of assaulting the deceased with Butend of the Axe has been assigned to co-accused Sanjay Kumar. On the above premise, it is thus urged that the case of the present applicant is clearly distinguishable from other co-accused Sanjay Kumar.

12. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 09.06.2023. As such, he has undergone almost 4 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, irrespective of above, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. He, therefore, submits that applicant 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 co-operate with the trial.

13. Per contra, the learned A.G.A. for State and the learned counsel for first informant have vehemently opposed the prayer for bail. They submit that since applicant is a named/charge sheeted accused, therefore, he does not deserve any indulgence by this Court. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

14. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that present case is a case of grave and sudden provocation, there is no calculated mens rea with the applicants to commit the crime in question nor there is any material to show that the occurrence has occurred on account of a pre-planned act of the accused applicants, as such, the offence complained of is covered under the IVth exception to Section 300 IPC, the same shall not travel beyond Section 304 Part II IPC, as per the statement of the witnesses examined under Section 161 Cr.P.C., the role of causing injury to the deceased is assigned to co-accused Sanjay Kumar, even otherwise, the injuries sustained by the deceased are simple in nature (contusion), there is nothing on record to show that the deceased sustained grievous or fatal injury, the clean antecedents of applicant, the period of incarceration undergone, 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 stands crystallized, yet in spite of above, the learned A.G.A. and the learned counsel representing first informant could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

15. Accordingly, the bail application is allowed.

16. Let the applicant-Roopchandra @ Rupai, be released on bail in the aforesaid case crime number on his furnishing a personal bond and 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 APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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 APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIM/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) RECORDING OF STATEMENT UNDER SECTION 313 CR.P.C. IF IN THE OPINION OF THE TRIAL COURT ABSENCE OF THE APPLICANT 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 THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

17. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above."

5. On the above premise, the learned counsel for applicants submits that the case of present applicants are similar and identical to that of named/charge sheeted co-accused Roopchandra @ Rupai. There is no such distinguishing feature on the basis of which, the case of present applicant could be so distinguished from aforementioned co-accused so as to deny them bail. He, therefore, submits that in view of above and for the facts and reasons recorded in the bail order of aforementioned co-accused, applicant is also liable to be enlarged on bail on the ground of parity.

6. Even otherwise, applicants are men of clean antecedents inasmuch as, they have no criminal history to their credit except the present one. Applicants are in jail since 09.06.2023. As such, they have undergone more than 4 and 1/2 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicants stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicants during the pendency of trial. On the above premise, he submits that applicants are liable to be enlarged on bail. In case, the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

7. Per contra, the learned A.G.A. has opposed the prayer for bail. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

8. Having heard, the learned counsel for applicants, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that co-accused Roopchandra @ Rupai has already been enlarged on bail, the case of present applicants are similar and identical to that of co-accused Roopchandra @ Rupai, the learned A.G.A. could not point out any such distinguishing feature to distinguish the case of present applicants from aforementioned co-accused, therefore, in view of above and for the facts and reasons recorded in the bail order of co-accused-Roopchandra @ Rupai, the clean antecedents of applicant, the period of incarceration undergone, 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 stands crystallized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present applications for bail, but without making any comments on the merits of the case, applicants have made out a case for bail.

9. Accordingly, the bail applications are allowed.

10. Let the applicants-Indraraj @ Chokhan and Ramchandra @ Bhagwan Ji, be released on bail in the aforesaid case crime number on their furnishing a personal bond and 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 APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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 APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIM/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) RECORDING OF STATEMENT UNDER SECTION 313 CR.P.C. IF IN THE OPINION OF THE TRIAL COURT ABSENCE OF THE APPLICANT 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 THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

11. However, it is made clear that any wilful violation of above conditions by the applicants, shall have serious repercussion on their bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 2.11.2023/Vinay