

Kailash Babu vs State Of U.P. on 4 April, 2023

Author: Saurabh Shyam Shamshery

Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31831 of 2022

Applicant :- Kailash Babu

Opposite Party :- State of U.P.

Counsel for Applicant :- Anshu Singh, Hemendra Pratap Singh

Counsel for Opposite Party :- G.A., Imran Ullah, Mohammad Khalid

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Hemendra Pratap Singh, learned counsel for the applicant, Sri Chandan Agarwal, learned A.G.A. and perused the record.
2. The applicant has approached this Court by way of filing the present Criminal Misc. Bail Application seeking enlargement on bail in Case Crime No.57 of 2022, under Sections 302, 394 and 411 I.P.C., Police Station-Delhi Gate, District-Aligarh after rejection of his Bail Application vide order dated 2.6.2022 passed by Incharge Sessions Judge, Aligarh.
3. Informant is husband of deceased. He lodged an F.I.R. that his son Aniket has informed him that his mother was lying in a pool of blood inside house with multiple injuries and she was admitted in the hospital. Informant has raised suspicion on painters who have undertaken whitewash at their house few days back. Wife of informant later on succumbed to injuries and as per postmortem report there were as many as 31 antemortem injuries which includes more than two dozen stitched

wounds i.e. it was a brutal murder.

4. Learned counsel for the applicant submits that initially an F.I.R. was lodged only under Section 307 I.P.C. Later on, after death of injured, Section 302 I.P.C. was added. After two days, informant disclosed that his Revolver and some money was also missing from his house, therefore, offence under Sections 394 and 411 I.P.C. were also added.

5. Learned counsel for the applicant further submitted that name of the applicant was disclosed in confessional statement of co-accused and after his arrest, alleged recovery of a knife having blood stained on it was made, however it was a false recovery. Alleged recovery of other items was on pointing out of co-accused. No motive has been assigned to the applicant to commit the alleged offence. He has disputed the time of arrest as differently mentioned in the memo of arrest as well as in the recovery memo. Applicant is languishing in jail since 13.3.2022, there is no likelihood of early disposal of trial and the applicant undertakes that if enlarged on bail, he will never misuse his liberty and will co-operate in the trial.

6. Learned A.G.A. submits that recovery of weapon used in crime was recovered on the pointing out of applicant. It was a case of brutal murder. There were number of wounds on the body of deceased and accused has confessed that he caused death by causing multiple stab injuries.

7. LAW ON BAIL - A SUMMARY (A) The basic rule may perhaps be tersely put as bail, not jail.

(B) Power to grant bail under Section 439 Cr.P.C., is of wide amplitude but not an unfettered discretion, which calls for exercise in a judicious manner and not as a matter of course or in whimsical manner.

(C) While passing an order on an application for grant of bail, there is no need to record elaborate details to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal. However, a Court cannot completely divorce its decision from material aspects of the case such as allegations made against accused; nature and gravity of accusation; having common object or intention; severity of punishment if allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of witnesses being influenced by accused; tampering of evidence; character, behaviour, means, position and standing of accused; likelihood of offence being repeated; the frivolity in the case of prosecution; criminal antecedents of accused and a prima facie satisfaction of Court in support of charge against accused. The Court may also take note of participation or part of an unlawful assembly as well as that circumstantial evidence not being a ground to grant bail, if the evidence/ material collected establishes prima facie a complete chain of events. Parity may not be an only ground but remains a relevant factor for consideration of application for bail.

(D) Over crowding of jail and gross delay in disposal of cases when undertrials are forced to remain in jail (not due to their fault) may give rise to possible situations that may justify invocation of Article 21 of Constitution, may also be considered along with other factors.

(See, State Of Rajasthan, Jaipur vs. Balchand @ Baliay (AIR 1977 SC 2447 : 1978 SCR (1) 535; Gurcharan Singh vs. State (Delhi Administration), (1978) 1 SCC 118); State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21; Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr (2010)14 SCC 496; Mahipal vs. Rajesh Kumar, (2020) 2 SCC 118; Ishwarji Mali vs. State of Gujarat and another, 2022 SCC OnLine SC 55; Manno Lal Jaiswal vs. The State of U.P. and others, 2022 SCC OnLine SC 89; Ashim vs. National Investigation Agency (2022) 1 SCC 695; Ms. Y vs. State of Rajasthan and Anr :2022 SCC OnLine SC 458; Manoj Kumar Khokhar vs. State of Rajasthan and Anr. (2022)3 SCC 501; and, Deepak Yadav vs. State of U.P. and Anr. (2022)8 SCC 559).

8. In the present case, deceased died due to multiple stab wounds on all over her body and it appears to be a merciless and brutal murder.

9. There is no dispute that name of the applicant was disclosed in confessional statement of co-accused which itself may be a weak evidence. However, evidence against applicant which is in the nature of recovery of a scissor used in the crime from a bag belonged to the applicant as well as recovery of stolen money also connects the applicant with offence.

10. The other submission of counsel for applicant about dispute of applicant's arrest appears to be a proposed defence, which may be considered by Trial Court on basis of evidence still to be led.

11. In these circumstances, applicant who is in jail since 13.3.2022 has not made out a case for bail since he was prima-facie involved in the offence of robbery and committing murder of a lady by multiple stab injuries along with co-accused.

12. Bail application is accordingly rejected.

Order Date:-4.4.2023 SB