Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1875 of 2023

Applicant :- Avi @ Avi Tyagi
Opposite Party :- State of U.P.
Counsel for Applicant :- Pradeep Kumar Rai,Atul Pandey,Dipendra Kumar,Sandeep Tripathi
Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.

2. Heard Sri Sandeep Tripathi, learned counsel for the applicant and Sri Suresh Bahadur Singh, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 281 of 2017, under Section 302 IPC, Police Station- Kotwali Nagar, District- Muzaffar Nagar, during pendency of the trial in the court below.

4. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 12.07.2019 and he is pressing the instant second bail application on the ground that applicant is in jail in the present matter since 02.01.2017 i.e. for almost seven years and all the witnesses of fact when appeared before the trial court then they did not support the prosecution case and they have been declared hostile.

5. He further submitted that applicant is not having any criminal history to his credit, therefore, considering the facts and circumstances of the case argued above, applicant should be released on bail.

6. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is facing trial under Section 302 IPC and as per the FIR, applicant is the principal accused, who caused fire arm injury to the deceased and after considering the entire facts of the case, first bail application of the applicant was dismissed but

could not dispute the fact that applicant is not having any criminal history and he is in jail in the present matter for last almost seven years and all the witnesses of fact, who are total five in number, when appeared before the trial court then they did not support the prosecution case and have been declared hostile.

7. I have heard learned counsel for the parties and perused the record of the case.

8. However, this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 12.07.2019 but it appears that applicant is in jail since 02.01.2017 i.e. for last almost seven years and till date, trial of the case could not be concluded and from the record, it reflects that in the charge sheet there are as many as 17 prosecution witnesses and till date, only 10 prosecution witnesses could be examined and out of 10 prosecution witnesses, five were witnesses of fact and all the five when appeared before the trial court then they did not support the prosecution case and have been declared hostile. Further, applicant is not having any criminal history to his credit.

9. Therefore, considering the facts and circumstances of the case discussed above, particularly the fact that all the witnesses of fact during trial have been declared hostile and applicant is in jail for last almost seven years and he is not having any criminal history, in my view applicant is entitled to be released on bail.

10. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

11. Let the applicant- **Avi @ Avi Tyagi** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

12. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

13. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 29.11.2023
KK Patel

Digitally signed by :-
KRISHN KANT PATEL
High Court of Judicature at Allahabad