

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2578 of 2023

Applicant :- Nitesh Pasi

Opposite Party :- State of U.P.

Counsel for Applicant :- Brijesh Kumar

Counsel for Opposite Party :- G.A.,Rajat Singh, T. Islam

Hon'ble Siddharth,J.

Heard learned counsel for the applicant and learned A.G.A for the State.

There are allegations of forming unlawful assembly, committing the offences of rioting, murder, conspiracy and beating with common object against accused.

Learned for the applicant submits the applicant has criminal history of 5 cases. He is languishing in jail since 28.08.2019. The deceased was also having criminal history. He was murdered by someone else and the applicant has been falsely implicated in this case. Status report of the trial court shows that not a single prosecution witness has been examined till date. Only charges have been framed.

Counsel for the informant, Sri T. Islam, has opposed the bail application and has submitted that it is a case of brutal murder. The trial has begun and statement of P.W-1 is being recorded. Trial will conclude soon. He has further submitted in case the applicant is enlarged on bail he may further affect the witnesses.

On the other hand learned A.G.A has opposed the prayer for bail.

Regarding long incarceration of under trials prisoners in jail due to delay in conclusion of trial, the Hon'ble Apex Court in re: Union of India vs. K.A. Najeeb reported in AIR 2021 Supreme Court 712 has held in Para 16 of the judgment being reproduced herein below as follows :-

"This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also

access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of ***Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021***; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant, Nitesh Pasi, involved in Case Crime No. 463 of 2019, under Sections- 147, 148, 149, 323, 302, 120-B IPC, Police Station- George Town, District- Prayagraj, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant will report his presence before the Police Station- George Town, District- Prayagraj in first week of every second month till the trial against the applicant is concluded.

(iii) The applicant shall file an undertaking to the effect that he 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.

(iv) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(v) In case the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the Court on the date fixed in such proclamation then the Trial Court shall initiate proceedings against him in accordance with law under Section 174-A of the Indian Penal Code.

(vi) The applicant 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 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 him in accordance with law.

In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 5.12.2023

Rohit