

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4083 of 2022

Applicant :- Nandkishor

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Mishra, Subhash Chandra Pandey, Zafar Abbas

Counsel for Opposite Party :- G.A., Rupendra Kumar Mishra

Hon'ble Ajay Bhanot, J.

By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 197 of 2021 at Police Station-Tanda, District-Rampur under Section 302 IPC. The applicant is in jail since 19.07.2021.

The bail application of the applicant was rejected by the learned trial court on 20.09.2021.

The following arguments made by Shri Sarve Nasir Abbas, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Ashish Kumar Ojha, learned AGA from the record, entitle the applicant for grant of bail:

1. Delay in lodgment of the FIR in the facts of this case is fatal to the prosecution case.
2. The first informant was the first to reach the site of incident after the death of deceased. He was aware of the presence of the applicant with the deceased at a time proximate to the death of the former. However, the first informant failed to get an FIR lodged in a timely fashion.

3. The sole person who had last witnessed the altercation between the deceased and the applicant, Hem Singh has testified before the trial court that he did not recognize the person who was sitting at the terrace.

4. The first informant as well as Khem Singh were witnesses to the inquest report.

5. In the Rai Panchan(part of inquest report), involvement of the applicant in the murder was not adverted to. The applicant was nominated as an afterthought and at the instigation of interested parties.

6. The applicant is a law abiding citizen who cooperated with the police investigations and had joined the trial.

7. The trial is moving at a snail's pace and shows no signs of an early conclusion. The applicant is not responsible for the delay in the trial proceedings.

8. Inordinate delay in concluding trial has lead to an indefinite detention of the applicant without there being any credible evidence to implicate him in the offence. Right of the applicant to a speedy trial has been violated.

9. The applicant does not have any criminal history apart from this case.

10. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and

undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant-**Nandkishor** be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

Considering the gravity of the offence, interest of justice will be served by directing the learned trial court to expedite the trial within a stipulated period of time.

The trial court is directed to conclude the trial within a period of one year from the date of receipt of a certified copy of this order. The learned trial court shall proceed with the hearing on a day to day basis to ensure that the above stipulated timeline of one year is strictly adhered to. All witnesses and counsels are directed to

cooperate with the trial proceedings.

The trial court has also to be conscious of the rights of the accused persons and is under obligation of law to ensure that all expeditious, necessary and coercive measures as per law are adopted to ensure the presence of witnesses. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

The learned trial court shall issue summons by regular process as per Section 62 Cr.P.C. and also by registered post as contemplated under Section 69 Cr.P.C. to expedite the trial.

The learned trial court shall promptly take out all strict coercive measures against all the witnesses in accordance with law who fail to appear in the trial proceeding. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

The police authorities shall ensure that warrants or any coercive measures as per law taken out by the learned trial court to ensure that the attendance of the witnesses are promptly executed.

The Superintendent of Police, Rampur shall file an affidavit before the trial court on the date fixed regarding status of execution of the warrants/service of summons taken out by the learned trial court.

In case there is a failure on part of the police authorities to execute the warrants or other coercive measures, the Superintendent of Police, Rampur shall state the reasons for the same in the said affidavit and also show the steps taken to execute the warrants. The Superintendent of Police, Rampur shall simultaneously inform the Additional Director General of Police (ADG) Bareilly Zone, about the aforesaid failure of the police authorities in the first instance to execute the warrants and coercive measures issued by the learned trial court. If required, the Additional Director General of Police (ADG) Bareilly, may issue an appropriate directions to ensure that the warrants issued are promptly executed by the learned trial court.

The delay in execution of warrants and consequent absence of witnesses is one of the principal causes of delays in criminal trials and has to be addressed effectively by all stakeholders.

The trial judge shall submit a fortnightly report on the progress of trial and the steps taken to comply with this order to the learned District Judge.

A copy of this order be communicated to the learned trial judge through the learned District Judge, Rampur by the Registrar (Compliance) by FAX.

Order Date :- 12.10.2023
Vandit