

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3808 of 2023

Applicant :- Sunny Balmiki

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhishek Mayank

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Abhishek Mayank, learned counsel for the applicant and Sri Jhamman Ram, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 108 of 2015, under Sections 366, 376-D, 302, 201 IPC, Police Station- Sashni, District- Aligarh, during pendency of the trial in the court below.

3. Learned counsel for applicant submits, this is the second bail application filed on behalf of the applicant and his first bail application has been dismissed by this Court on 09.12.2020. He further submitted that he is pressing the instant second bail application on the ground that applicant is in jail since 02.04.2016 i.e. for more than seven and half years and till date, trial of the case could not be concluded.

4. He further submitted that till date, only two prosecution witnesses could be examined including informant and one of the victims, who has been examined as P.W. 2. He further submitted that one victim, who was appeared before the trial court as P.W. 2 did not state anything against the applicant.

5. He further submitted that although, it is case of Sections 302 and 376-D IPC, in which out of two alleged victims, one victim alleged to have been murdered by the applicant and co-accused but except the confessional statement of co-accused, there is no other evidence against the applicant on record with regard to alleged murder of one of the victim.

6. He further submitted that co-accused Deepak has already been released on bail by co-ordinate Bench of this Court vide order dated 08.12.2017 passed in Criminal Misc. Bail Application No.

7847 of 2017 even before the rejection of the first bail application of the applicant.

7. He further submitted that in the charge-sheet there were 12 prosecution witnesses and till date, as only two prosecution witnesses could be examined, therefore, there is no hope of early disposal of the trial.

8. He further submitted that applicant is not having any criminal history, therefore, considering the facts and circumstances of the case, he may be enlarged on bail.

9. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case of Sections 302 and 376-D IPC and allegation against the applicant and co-accused Deepak is that they committed rape with two girls and thereafter they committed murder of one girl and first bail application of the applicant was dismissed on merit but could not dispute the fact that except the confessional statement of co-accused, there is no other evidence against the applicant on record with regard to alleged murder of one victim.

10. He further could not dispute the fact that another victim, who survived, when appeared before the trial court as P.W. 2 then she did not state anything against the applicant. He further could not dispute the fact that applicant is not having any criminal history and he is in jail since 02.04.2016 i.e. for more than seven and half years.

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

12. Although, this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit and there is allegation against the applicant that he along with co-accused Deepak committed rape with two girls and thereafter they committed murder of one girl but as far as allegation of murder is concerned in this regard only confessional statement of co-accused Deepak is on record.

13. Further, although, it appears that another victim during investigation stated against the applicant that he along with co-accused Deepak committed rape with her but when she appeared before the trial court as P.W. 2 then she did not make any allegation against the applicant.

14. Further, applicant is in jail since 02.04.2016 i.e. for more than seven and half years and till date, trial of the case could not be concluded and out of total 12 prosecution witnesses, only 2 prosecution witnesses could be examined till date, therefore, it appears that trial of the case is moving with languid pace and there is no hope of its early disposal.

15. Therefore, considering the facts and circumstances of the case discussed above, particularly the fact that applicant is in jail for more than seven and half years, in my view applicant is entitled to be released on bail.

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

17. Let the applicant- **Sunny Balmiki** 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.

18. 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.

19. 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 :- 12.10.2023

KK Patel