

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7074 of 2023

Applicant :- Prashant Sharma

Opposite Party :- State of U.P.

Counsel for Applicant :- Neeraj Kumar Sharma, Shikhar Awasthi

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

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

Third supplementary affidavit filed today is taken on record

This bail application was earlier heard by coordinate Bench of this court and following order was passed on 12.10.2023 which is as follows :-

"The applicant is in jail since 12.07.2012.

Learned trial judge, Ghaziabad shall forthwith send a fresh report regarding the status of the trial and cause for the delay, in concluding the trial in Case Crime No. 662 of 2012 under Section 302 IPC, Police Station-Sahibabad, District-Ghaziabad with the following details in tabulated form:-

(1) Dates on which chargesheet was filed and the charge was framed.

(2) Number and particulars (i.e. name, nature of witness like eye witness and expert witness etc.) of prosecution witnesses proposed to be examined as per the charge sheet.

(3) Names and number of prosecution witnesses who have been examined before the trial court with dates.

(4) Names and number of witnesses who have been summoned but have not attended the trial proceedings on the appointed dates with dates.

(5) Names and number of witnesses against whom coercive measures have been taken out with dates.

(6) Copies of statements of the witnesses.

Put up this case on 30.10.2023 in the list of additional cause list.

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

A compliance report has been received from the court below which shows that the record of the trial court has been received by the Special Judge (SC/ST) Act and Additional District and Sessions Judge, Ghaziabad on 31.01.2019 by the order of District Judge, Ghaziabad. The applicant was being summoned from District Jail, Agra, thereafter it came to be known that he is in Firozabad jail and he was summoned from Firozabad then it was found by the court that he was lodged in District Jail, Etawah and despite being summoned he is not appearing before the court below.

Learned counsel for the applicant submits that he is in jail and being transferred from one jail to other. The summons being sent by the court below are not being complied by the jail officials for which he cannot be faulted with. The applicant has criminal history of 11 cases explained in bail application and 9 cases explained in supplementary affidavit dated 07.11.2023. He has submitted that in the cases explained in the bail application are petty cases except the present case and four cases under Section 302 IPC. In two of them he was not named and implicated to workout the cases. He has further submitted in the supplementary affidavit six cases under Section 302 IPC and other sections he was not named and implicated simultaneously only to workout the cases. Even otherwise he is in jail since 12.07.2012 and it is uncertain when the trial would be concluded.

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, Prashant Sharma, involved in Case Crime No. 662 of 2012, under Section- 302 IPC, Police Station- Sahibabad, District- Ghaziabad, 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 Loni, District- Ghaziabad in the first week of every month.

(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.

Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of one year.

Registrar (compliance) is directed to communicate this order to the trial Court for necessary compliance within ten days.

Order Date :- 22.11.2023

Rohit