

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12328 of 2022

Applicant :- Amit

Opposite Party :- State of U.P.

Counsel for Applicant :- Rahul Mishra, Abhishek Chauhan, Ram Krishna Mishra

Counsel for Opposite Party :- G.A., Arvind Kumar Singh

Hon'ble Siddharth, J.

Heard learned counsel for the applicant and learned A.G.A. for the State and perused the material on record.

By means of this application, the applicant, Amit, who is involved in Case Crime No. 929 of 2018, under Sections- 302, 307, 147, 148, 149 IPC, Police Station- Loni, District- Ghaziabad, and is in jail since 09.06.2018, is seeking enlargement on bail during the trial.

This is second bail application of the applicant.

The first bail application of the applicant was rejected by the coordinate Bench of this court for want of prosecution on 28.07.2021.

Counsel for the applicant has submitted that before the trial court P.W.-1 has been examined. The informant has not supported the allegation made in the FIR. He has neither admitted lodging FIR nor witnessing the incident. He has also submitted that co-accused, Vikas, has been enlarged on bail vide Criminal Misc. Bail Application No. 14868 of 2021 on 18.07.2023 by the following order dated 18.07.2023 is quoted hereinbelow :-

"1. Heard Sri Ram Krishna Mishra, learned counsel for the applicant and learned A.G.A for the State.

2. Supplementary affidavit filed today is taken on record.

3. There is allegation against the applicant of committing the offence of murder and attempt to murder along with three co-accused.

4. Counsel for the applicant submits that till date only the informant has been

examined. He has also not supported the prosecution case. His cross-examination is yet to take place. There are 14 prosecution witnesses yet to be examined. The applicant is in jail since 09.06.2018 and has criminal history of one case under Arms Act.

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

6. 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.

7. Let the applicant, Vikash, involved in Case Crime No. 929 of 2018, under Sections- 302, 307, 147, 148, 149 IPC, Police Station- Loni, 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 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.

(iii) 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.

(iv) 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.

(v) 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.

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

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

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

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

It is submitted by learned counsel for the applicant that similarly placed co-accused, Vikash, has already been enlarged on bail by this Court by order dated 18.07.2023 passed in Criminal Misc. Bail Application No. 14868 of 2021. He has further submitted that since the role of the applicant is identical to that of co-accused, Vikash, who has already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity and for the reasons given in the order of co-accused. The applicant is languishing in jail since 09.06.2018. Trial will take time to conclude. There are 14 prosecution witnesses in all the case.

The prayer for bail has vehemently been opposed by learned A.G.A.

Considering the submissions made by learned counsel for the applicant as well as learned A.G.A., this Court is of the view that the applicant has made out a case for grant of bail on the ground of parity.

In view of the above, let the applicant be released on bail on his executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the court concerned with the following conditions :-

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

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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 :- 6.12.2023

Rohit