

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12981 of 2021

Applicant :- Pappu

Opposite Party :- State of U.P.

Counsel for Applicant :- Som Veer, Ankit Agarwal, Mohit Gautam, Pawan Kumar, Rajat Kumar Shukla, Rajeev Goswami

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Rajeev Goswami, learned counsel for the applicant, Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on record.
3. This is the third bail application under Section 439 of Code of Criminal Procedure filed by the applicant Pappu seeking enlargement on bail during trial in connection with Case Crime No. 389 of 2018, under Sections 504, 506, 302, 34 IPC, registered at P.S. Barsana, District Mathura.
4. The first bail application being Criminal Misc. Bail Application No. 9785 of 2019 was rejected by Hon'ble Vipin Sinha, J. (as he was then) vide order dated 8.5.2019 for want of prosecution. The second bail application being Criminal Misc. Bail Application No. 22593 of 2019 was rejected by Hon'ble Ravi Nath Tilhari, J. (as he was then) vide order dated 25.6.2020 on merits.
5. On 05.10.2023 the following order was passed by this Court:-

"1. List revised.

2. Sri Rajeev Goswami, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State are present.

3. The only argument advanced by learned counsel for the applicant in the present IIIrd bail application is that trial in the present matter is going on in which cross-examination of P.W.-2 is going on. It is argued that the applicant is in jail since 29.07.2018 and as such has undergone more than five years in jail. It is argued that looking to the delay in trial and the period of incarceration of the applicant, the applicant be released on bail. Learned counsel has placed before the Court the order-sheet of the trial court which is annexed as Annexure-SA-1 to the supplementary affidavit dated 28.03.2023 which is from 31.12.2018 to 13.03.2023.

4. For appreciating the arguments of learned counsel for the applicant and looking to the fact that the order-sheet as filed is only upto the month of March, 2023, it would be in the fitness of things that a report from concerned District & Sessions Judge is called for in which there shall be specific details on the following counts:-

(i) Number of witnesses to be examined in the trial;

(ii) Number of witnesses examined till date in the trial;

(iii) The reason for delay of trial;

(iv) *As to who is responsible for delay in trial and;*

(v) *The approximate time which would be taken in conclusion of trial.*

5. *Let the matter be listed on 07th November, 2023.*

6. *Office to communicate this order to the concerned District & Sessions Judge within four days of which a report be sent within 10 days thereafter."*

6. In compliance of the said order, reports of the trial court concerned and the District Judge concerned have been received. A perusal of the said reports goes to show that in the present matter 10 prosecution witnesses have to be examined out of whom two prosecution witnesses have been examined and the date is being fixed for examination of third witness. The trial court has stated that disposal of the present trial is in his top priority and it is expected that the same would be completed within three months which is the outer limit and with regards to delay in trial the reason as given is firstly because of Covid-19 and then secondly because of an application moved under Section 319 Cr.P.C. by the complainant which although was allowed and two co-accused namely Lakkho and Harbhan were summoned who after coercive measures surrendered before the trial court on 10.10.2022.

7. Learned counsel for the applicant then submits that looking to the nature of case and the facts of the case and also the fact that two co-accused who were summoned under Section 319 Cr.P.C. have been released on bail, the applicant who is in jail since 29.7.2018 and has remained in jail for about 5 years and 3 months, be released on bail.

8. Per contra, learned A.G.A. opposed the prayer for bail and argued that although the first bail application of the applicant was dismissed in non prosecution but the second bail of the applicant was dismissed on merits by a detailed order passed by another Bench of this Court. It is argued that the applicant is shown as the main assailant and even in the statements of the two witnesses recorded during trial, the role of the applicant is consistent and since the trial is under progress, release of the applicant at this stage may have an adverse effect therein.

9. After having heard learned counsels for the parties and perusing the records, it is evident that the first bail application of the applicant was rejected in non prosecution. The second bail application of the applicant was rejected vide order dated 25.6.2020 passed by Hon'ble Ravi Nath Tilhari, J. (as he was then). The said order reads as under:

"Heard Shri Mukhtar Alam and Shri K.N. Bhargava, learned counsel for the applicant, learned A.G.A. for the State and perused the material on record.

Supplementary affidavit filed by the counsel for the applicant in Court today is taken on record.

This is the second bail application filed by the applicant Pappu. The first bail application was dismissed for want of prosecution by order dated 08.05.2019 by Hon'ble Mr. Justice Vipin Sinha.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Pappu seeking enlargement on bail during trial in connection with Case Crime No. 389 of 2018, under Section 504, 506, 302, 34 I.P.C. Police Station-Barsana, District-Mathura.

Learned counsel for the applicant has submitted that the first bail application was dismissed for want of prosecution by order dated 08.05.2019 and the matter was released by order dated 09.12.2019. Learned counsel for the applicant submits that the FIR is after thought in as much as the inquest was conducted on

28.07.2018 at about 16:30 p.m. The incident is dated 28.07.2018 at about 8:30 a.m. and the FIR was lodged on 28.07.2018 at 4:30 p.m. whereas the Police Station is at a distance of about 18 km from the place of incident. The counsel for the applicant submitted that the inquest was started at 16:30 p.m., but the time of its completion has not been indicated; that column is blank.

The post mortem which was conducted at 5:58 p.m. on 28.07.2018 shows there is fire arm injury. The FIR is against 5 persons but the chargesheet has been filed against 3 persons only and consequently sections 147/148 I.P.C. were removed and Section 34 was inserted. He has submitted that it was case of hit and run in which due to enmity the applicant was falsely implicated. The statement of the witnesses are false. Learned counsel for the applicant has submitted that the trial is proceeding in which P.W-1 has been examined. The applicant has no criminal history and if the applicant is granted bail, he will not misuse the liberty of bail and shall cooperate in the trial proceedings and shall not tamper with the evidence. The applicant is languishing in jail since 29.07.2018.

Per contra learned A.G.A. submits that in the FIR specific role of shooting has been assigned to applicant Pappu. The said version is supported by the statements recorded under Section 161 Cr.P.C. of the first informant as well as Suresh and Shibbo. As per the post mortem report there is fire entry wound on left side chest and the cause of death is due to shock and hemorrhage caused by fire arm injury to heart and lung. Injury examined in post mortem report is anti mortem in nature.

The counsel for the applicant submits that in the statements of Suresh, Shibbo and Shankar Singh it has been stated that firing took place from both the sides as the persons of Mando and Manora also fired from Tamancha. It is as such not specific as to the death was caused by the bullet of fired by which side. However, it could not be controverted in the said statements Pappu has been assigned role of firing.

Considering the totality of the case in particular, nature of the offence, evidence available on record, complicity of the applicant and without further any comments on merit, I am not inclined to release the applicant on bail.

The bail application of Pappu, the applicant is rejected."

10. The trial is under progress in which two prosecution witnesses have been examined and the date is being fixed for examination of P.W.-3. In all 10 prosecution witnesses have to be examined. The trial court expects to conclude the trial within 03 months as outer limit.

11. Looking to the nature of evidence and the report of the trial court and the fact that trial is under progress, at this stage, this Court is not inclined to release the applicant on bail.

12. The bail application is, accordingly, rejected.

13. However, the trial court is directed to expedite the trial of the said case and conclude the same at the earliest without giving any unnecessary adjournments to either of the parties strictly in accordance with Section 309 Cr.P.C., subject to any legal impediment. It may adopt coercive measures against the witnesses if needed.

(Samit Gopal,J.)

Order Date :- 7.11.2023/Naresh