

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14678 of 2021

Applicant :- Jitendra Ram

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Kumar Singh, Amit Kumar Srivastava, Manoj Kumar Agarwal, Raj Kumar Singh, Sunil Kumar, Uday Prakash Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Sunil Kumar Singh, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Jitendra Ram**, seeking enlargement on bail during trial in connection with Case Crime No. 106 of 2018, under Sections 394, 302, 411 I.P.C. and 4/25 Arms Act, Police Station Gadwar, District Ballia.
4. On 18.08.2023 the following order was passed by this Court:-

"1. List revised.

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

3. This is a second bail application. The first bail application on behalf of the applicant was rejected by a coordinate Bench of this Court vide order dated 5.11.2020 passed in Criminal Misc. Bail Application No.39347 of 2018.

4. The sole argument of learned counsel for the applicant is that the applicant is in jail since 5.6.2018 but the trial has not yet concluded. He has placed the copy of the order sheet from 29.7.2021 to 10.7.2023 which is annexed as Annexure No.1 to the supplementary affidavit dated 10.8.2023.

5. Looking to the arguments and the order sheet of the trial court at the first instance, it would be appropriate to call for a report from the District and Sessions Judge, Ballia by the next date regarding status of trial wherein it shall be reported as to how many witnesses have to be examined, how many witnesses have been examined till date, the reason for delay in trial and the estimation of time for conclusion of the same.

6. Let the matter be listed on 6.10.2023.

7. Office to communicate this order to the court concerned within a period of two weeks from today."

5. As per the office report dated 05.09.2023 a report dated 15.09.2023 of the concerned trial court has been received from the District & Sessions Judge concerned.

6. This Court has perused the said report. The perusal of the same goes to show that charge-sheet in the matter was filed on 04.09.2018 after which charges were

framed on 26.02.2019. The prosecution proposes to produce as many as 24 witnesses in the trial. Till date Santosh Kumar Yadav the informant has been produced as P.W.-1 after being summoned on 29.01.2020 and his examination-in-chief was recorded on 07.02.2020 and the cross-examination is still to be continued. The next date fixed for prosecution evidence is reported as 15.09.2023. With regards for delay in trial the learned trial court has in point no.5 stated as follows:-

"The witnesses do not turn up and the police / prosecution agency meant to produce the witness do not co-operate."

7. Further with regards to the estimation regarding the time for conclusion of trial, the trial court while giving its report in point no.6 has stated as follows:-

"About one year's limit is required."

8. The applicant is in jail since 05.06.2018 and as such has remained in jail for about 5 years & 6 months. The report of the trial court estimates about one year for conclusion of trial and the reason for delay in trial has been stated to be the witnesses not turning up and the police / prosecution agency meant to produce witnesses not co-operating.

9. In view of the same without going into the merits of the case and looking to the delay in trial with the further fact that the applicant has no criminal history as stated in paragraph 15 of the affidavit, let the applicant- **Jitendra Ram**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties (**one of the sureties will be of his family members and the other will be of a local person**) each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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 will not misuse the liberty of bail in any manner whatsoever. 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., may be issued and if 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 I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates

fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is **allowed**.

12. However, if the applicant on any date seeks adjournment and the trial court considers it to be unnecessary and an effort to delay the trial, it shall forthwith cancel his bail.

Order Date :- 13.12.2023

AS Rathore

(Samit Gopal,J.)