

Neutral Citation No. - 2023:AHC:214543

Reserved On:- 07.11.2023

Delivered On:- 08.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15872 of 2022

Applicant :- Anand

Opposite Party :- State of U.P.

Counsel for Applicant :- Lal Mani Singh, Praveen Kumar Singh

Counsel for Opposite Party :- G.A., Sharique Ahmed

Hon'ble Siddharth, J.

1. Heard Sri Lal Mani Singh, learned counsel for the applicant; Sri Sharique Ahmad, learned counsel for the informant and learned A.G.A for the State.
2. This is third bail application of the applicant.
3. The first bail application was rejected by the coordinate Bench of this Court on 19.04.2017. The second bail application was rejected by the same coordinate Bench by the order dated 27.05.2019 directing the trial court to conclude the trial as per Section 309 Cr.P.C as early as possible but the same has not been concluded till date.
4. Learned counsel for the applicant submits that the applicant is not a previous convict and he is languishing in jail since 03.10.2016. Status report was called from court below which shows that the trial is pending on the stage of recording of statement of accused under Section 313 Cr.P.C. There is also a cross case being S.T. No. 577 of 2021 wherein the four prosecution witnesses have been examined. Being cross cases both the cases are required to be decided together.

5. Counsel for the applicant has also submitted that it is uncertain when proceedings of cross case would be concluded. Hence, the applicant may be enlarged on bail.

6. Learned counsel for the informant has vehemently opposed the bail application. He has submitted that it is the applicant's side which has adopted dilatory tactics and not cross examined the witness promptly which has resulted in delay in trial. The applicant cannot get benefit of same. He has further submitted that the applicant is the main accused and has been assigned the role of causing the fatal axe injury to the deceased.

7. Learned A.G.A has also opposed the bail application of the applicant.

8. After hearing the rival contentions, this Court finds that the applicant is in jail since 03.10.2016. He cannot be blamed for not cross examining the prosecution witnesses promptly. The applicant does not appears to be a previous convict. Keeping in view the pace of trial in the connected cross case, trial of both the cases will take time to conclude. Seven years incarceration in jail before trial is sufficient grant for enlarging for applicant on bail.

9. 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.

10. Let the applicant, Anand, involved in S.T. No. 573 of 2016 arising out of Case Crime No. 153 of 2016, under Sections- 147, 148, 149, 452, 304 IPC, Police Station- Nawabganj, District- Kanpur Nagar, 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.

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

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

13. Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of six months.

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

Order Date :- 08.11.2023

Rohit