

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14969 of 2023

Applicant :- Madan

Opposite Party :- State of U.P.

Counsel for Applicant :- Naushad Alam, Shashi Kant Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Naushad Alam, learned counsel for the applicant and Dr. S. B. Maurya, learned AGA-I for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 227 of 2015, under Sections 302, 34 IPC, Police Station Shamli, District Shamli during pendency of the trial.
3. Learned counsel for the applicant submitted that this is third bail application filed on behalf of the applicant. The first two bail applications of the applicant have already been dismissed on merit by this Court and he is pressing the instant third bail application on the sole ground that applicant is in jail since 24.07.2015 i.e. for more than eight years and till date trial of the case could not be concluded.
4. He further submits that in the charge-sheet there are as many as 14 prosecution witnesses and out of total 14 prosecution witnesses till date only one prosecution witness could be examined. He further submits that trial of the case is moving with languid pace and there is no hope of its early disposal, therefore, considering the long incarceration of the applicant of more than eight years, he may be enlarged on bail.
5. Per contra, learned AGA opposed the prayer for bail and submits that this is third bail application filed on behalf of the applicant and first two bail applications of the applicant have already been dismissed by this Court on merit and applicant is the person, who caused firearm injury to the deceased.
6. He further submits that apart from the present case, applicant is also having criminal history of three other cases but he fairly conceded that all the three cases were of minor offences. Learned AGA further could not dispute the fact that applicant is in jail since 24.07.2015 i.e. for more than eight years and till

date trial of the case could not be concluded.

7. I have heard learned counsel for the parties and perused the record of the case.

8. However, this is third bail application filed on behalf of the applicant and earlier two bail applications of the applicant have already been dismissed by this Court on merit but it appears that applicant in the present matter is in jail since 24.07.2015 i.e. for more than eight years and till date trial of the case could not be concluded.

9. From perusal of the record, it appears that there are total 14 prosecution witnesses and till date only one prosecution witness could be examined, therefore, it appears that trial of the case is moving with snail's speed and there is no hope of its early disposal. However, during the course of argument, learned AGA pointed out that apart from the present case applicant is having criminal history of three other cases but all the cases, according to learned AGA, were of minor offences.

10. The right of speedy trial is fundamental right of an accused and personal liberty of a person is the most cherished fundamental right provided under Article 21 of the Constitution of India.

11. The Apex Court in the case of **Union of India Vs. K.A. Najeer (2021) 3 SCC 713** categorically observed that if there is violation of fundamental right of speedy trial of an accused then accused may be enlarged on bail.

12. Therefore, considering the facts and circumstances of the case, particularly the long incarceration of the applicant of more than eight years, in my view, applicant is entitled to be released on bail.

13. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

14. Let the applicant - **Madan** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the

facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

15. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

16. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 6.11.2023

AK Pandey