

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 18549 of 2023

Applicant :- Irfan

Opposite Party :- State of U.P.

Counsel for Applicant :- Vikas Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Sri Vikas Mishra, learned counsel for the applicant and Sri Triveni Saran Rai, learned counsel for the State and perused the record.

2. This is second bail application. The first bail application was rejected vide order dated 11.9.2019 passed in Crl. Misc. Bail Application No. 49766 of 2017 (Irfan vs. State of U.P.) by Hon'ble Sudhir Agarwal, J. (as he then was) on the ground that the same may have become infructuous by efflux of time.

3. On 05.10.2023, the following order was passed by this Court:

"1. List revised.

2. Heard Sri Vikas Mishra, learned counsel for the applicant and Sri Devendra Nath Mishra, learned counsel for the State.

3. This is the second bail application.

4. The sole ground as argued by learned counsel for the applicant by placing the order sheet of the trial court which is annexed as Annexure No. SA-1 to the supplementary affidavit dated 28.08.2023 from 10.01.2020 to 11.07.2023 is that the trial in the present matter is stagnant inasmuch as after the evidence of two prosecution witnesses the other prosecution witnesses are not appearing despite the trial court issuing bailable warrants against them.

5. It is argued that the applicant is in jail since 03.01.2017 and as such has been in jail for more than 6 years without any fault of his. It is argued that as such the applicant be granted bail.

6. After hearing the learned counsel for the parties, at the first instance, it would be appropriate to get report from the District and Sessions Judge concerned within a period of two weeks regarding the stage of trial, the number of witnesses to be examined in it, the number of witnesses examined till date, the reason for delay in trial, the person responsible for delay in trial

and the approximate time in which the trial may be completed.

7. Office to communicate this order to the District and Sessions Judge concerned within a week and the report be sent within the aforesaid period.

8. Let the matter be listed on 07.11.2023."

4. As per office report dated 04.11.2022, a report of the trial court has been received duly forwarded by the concerned District Judge.

5. A perusal of the said report goes to show that in the present matter, seven witnesses have been examined till date whereas examination of three witnesses still remains, the prosecution has requested for time to produce the said witnesses, the court is continuously issuing process against them. The trial court has stated that it would take around six months more in disposal of the trial. The applicant is in jail since 03.1.2017. It is about six years and ten months since then. The trial is yet to complete and is to take approximately six months more as per assumption of the trial court.

6. Learned counsel for the applicant argued that the first information report was lodged against the applicant and other accused persons alleging therein that the applicant, co-accused Buddhhan, Naseer and Usman have poured kerosene over his daughter and set ablaze. She died of burn injuries. It is argued that applicant has no motive to commit the said offence. It is further argued that the deceased committed suicide by burning herself. It is argued that co-accused Buddhhan, Islam and Smt. Bhoori have been granted bail by Co-ordinate Bench of this Court vide orders dated 03.4.2023, 07.4.2023 and 05.2.2017. The orders granting bail to co-accused Buddha has been placed before the Court which is Annexure 8 to the affidavit.

7. Learned counsel has further placed before the Court order dated 31.5.2023 passed in Crl. Misc. Bail Application No. 18349 of 2023 of co-accused Naseer by which he has been granted bail. The said order is taken on record. It is argued that in the dying declaration of the deceased, six accused persons including the applicant have been assigned the role of setting the deceased on fire. No specific role has been assigned to the applicant. Further, while placing para 32 of the affidavit, that the applicant is not a previous convict.

8. *Per contra*, learned counsel for the State opposed the prayer for bail but could not dispute the arguments as aforesaid.

9. After having heard learned counsels for the parties and perusing

the matter, it is evident that the applicant has been in jail for the last six years and ten months. The trial as per the report of the trial court would still take six months more time for its conclusion which is an estimation. Seven witnesses have been examined before the trial court. The witnesses of fact have already been examined before the trial court and as such there are no chances of the applicant tampering with the witnesses. Co-accused Buddhhan, Islam, Smt. Bhoori and Naseer have been granted bail by Co-ordinate Benches of this Court.

10. Let the applicant **Irfan** be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties 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.

11. 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.

12. The bail application is ***allowed***.

13. The trial court is directed to conclude the trial as expeditiously as possible without granting undue adjournments to either of the parties subject to any legal impediment. It may also initiate coercive measures against the witnesses if they did not appear to give their deposition before it.

Order Date :- 7.11.2023

Madhurima

(Samit Gopal, J.)