

Court No. - 86

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 20364 of 2023

Applicant :- Ram Bhuwan Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Prakash Sharma, Ashok Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. This is the fourth bail application. The first being Criminal Misc. Bail No. 36480 of 2017 was dismissed by Hon'ble Sudhir Agarwal, J. (as he then was) vide order dated 12.07.2019, second being Criminal Misc Bail Application No. 10516 of 2020 was rejected by Hon'ble Dinesh Kumar Singh-I, J. (as he then was) vide order dated 25.11.2020 and third being Criminal Misc. Bail Application No. 22594 of 2022 was rejected by me vide order dated 30.11.2022.

3. This bail application has been filed by the applicant seeking bail in Case Crime No. 249 of 2016, under Sections 302/307 IPC, Police Station Lanka, District Varanasi.

4. Learned counsel for the applicant has submitted that in the instant case, applicant is languishing in jail since 04.06.2016 and has almost undergone about seven years and four months of incarceration in jail and there are very bleak chances of trial being concluded in near future due to very heavy dockets.

5. Learned counsel for the applicant has next submitted that co-accused Pankaj Yadav @ Dhananjay Yadav has already been granted bail by Co-ordinate Bench of this Court in Criminal Misc. Bail Application No. 53477 of 2019, vide order dated 22.08.2022.

6. Learned counsel for the applicant has next submitted that regarding long incarceration of under trials prisoners in jail due to delay in conclusion of trial, the Hon'ble Apex Court in the case of ***Union of India Vs. K.A. Najeed reported in AIR 2021, SC 712***, has held in para 16 of the judgment as

under:-

"This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Under trial Prisoners v. Union of India, it was held that under trials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."

7. Learned counsel for the applicant has next submitted that applicant is in jail since 04.06.2016 and has no criminal history to his credit. In the present case, charge-sheet has already been submitted and there is no chance of applicant fleeing away from judicial process or tampering with the witnesses, as such, he be released on bail.

8. Per contra, learned A.G.A. has opposed the prayer for bail but could not dispute the aforesaid facts and the fact that the applicant is in jail since 04.06.2016 and has no criminal history to his credit.

9. Having considered the rival submissions made by learned counsel for the parties and taking into consideration the long incarceration of the applicant in jail, who is under trial prisoner and keeping in view the law laid down by the Hon'ble Apex Court in such circumstances for grant of bail and considering the fact that co-accused Pankaj Yadav @ Dhananjay Yadav has already been granted bail by Co-ordinate Bench of this Court, I am of the considered opinion that the applicant has made out a case for bail.

10. Let the applicant **Ram Bhuwan Yadav** be released on bail in the aforesaid case crime number on furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court concerned subject to the following conditions. Further, before issuing the release order, the sureties be verified.

(A) The applicant shall not tamper with the evidence or

threaten the witnesses.

(B) 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.

(C) 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.

(D) 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.

(E) The applicant shall remain present in person before the trial court on the dates fixed for 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, the complainant is free to move an application for cancellation of bail before this court.

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

13. The bail application is accordingly **allowed**.

14. Office is directed to send a soft copy of this bail order by e-mail to the applicant through the Jail Superintendent concerned.

Order Date :- 13.10.2023/Nadim