

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 18904 of 2023

Applicant :- Rahul Dev Chaudhary Baliyan

Opposite Party :- State of U.P.

Counsel for Applicant :- Saurabh Pathak, Jitendra Singh Sengar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Saurabh Pathak, learned counsel for the applicant and Sri Suresh Bahadur Singh, learned AGA for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 725 of 2020, under Sections 394, 411, 420, 467, 468, 471 IPC, Police Station Auraiya, District Auraiya during pendency of the trial.
3. Learned counsel for the applicant submits that this is a second bail and first bail was dismissed by this Court on 4.4.2023 and the instant second bail applicant has been filed by the applicant on the ground that applicant is in jail since 26.9.2020 i.e. for more than three years but till date trial of the case could not be concluded.
4. He further submits that in the charge sheet there are as many as 16 witnesses but till date not even single witness could be examined.
5. He further submits that without any fault of the applicant trial is pending for the last three years. He further submits that although applicant was having criminal history to his credit but his criminal history is explained in para 10 of the affidavit and therefore because of his long incarceration he may be released on bail.
6. Per contra, learned AGA opposed the prayer for bail and submits

that the first bail application of the applicant was dismissed by this court but could not dispute that applicant is in jail since 26.9.2020 i.e. for more than three years and not even single witness could be examined by the trial court till date.

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

8. Although this is the second bail application filed on behalf of the applicant and his first bail application has already been dismissed by this Court but from the record it reflects that applicant is in jail since 26.9.2020 i.e. for more than three years and not even single witness could be examined by the trial court till date, however in the charge sheet there are as many as 16 witnesses.

9. Therefore, it appears that trial of the case is moving with languid pace and there is no hope of early disposal of the trial.

10. The Apex Court in the case of **Union of India Vs. K.A.Najeeb, (2021)3 SCC 713** observed that on the ground of long incarceration bail application of accused should be considered as it is violation of fundamental right of the accused provided under Article 21 of the Constitution of India.

11. Therefore considering the fact and circumstances of the case, particularly the fact that applicant is in jail for more than three years and till date not even single witness could be examined, applicant is entitled to be released on bail.

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

13. Let the applicant - Rahul Dev Chaudhary Baliyan 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.

14. 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.

15. 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 :- 12.10.2023

Aiman