

Neutral Citation No. - 2023:AHC:222980

Reserved On:- 22.11.2023

Delivered On:- 24.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 26322 of 2020

Applicant :- Akhtar Katra @ Ashraf

Opposite Party :- State of U.P.

Counsel for Applicant :- Sheshadri Trivedi, Ajay Kumar

Pandey, Dharmendra Shukla, Satish Trivedi (Senior Adv.)

Counsel for Opposite Party :- G.A., Dashrath Lal, Ram Sagar Yadav

Hon'ble Siddharth, J.

1. Heard Sri Anil Tiwari, learned Senior counsel, assisted by Sri Kabir Tiwari, learned counsel for applicant; Sri Dashrath Lal and Ram Sagar Yadav, learned counsel for informant and Sri Gyan Narayan Kanaujiya, as well as the learned AGA for the State and perused the material placed on record.

2. The instant bail application has been filed on behalf of the applicant, **Akhtar Katra @ Ashraf**, with a prayer to release him on bail in **Case Crime No. 429 of 2016, under Sections 147, 148, 149, 302, 307, 34 IPC and Section 7 of Cr.L.A., Act, Police Station- Naini, District- Allahabad**, during pendency of trial.

3. This is the second bail application of applicant. The first bail application of applicant was rejected by coordinate Bench of this Court on 27.02.2020 which is not available now.

4. Learned counsel for the applicant has submitted that when the first bail application of applicant was rejected, trial court was directed to conclude the trial against the applicant within a period of four months, but only one prosecution witness has been examined till date. He has submitted that applicant was not named in the FIR. He has been subsequently implicated in this case. Learned counsel for applicant has further submitted that two co-accused, namely, Vimal Kumar Sharma @ Munnu Tiwari and Birendra Yadav @ Kariya @ Thokiya, were already enlarged on bail in the year 2018. There are 19 prosecution witnesses in the charge-sheet. It is not certain when the prosecution evidence would be concluded and, thereafter when the trial would be concluded. Applicant has criminal history of 33 cases explained in paragraph 18 of the bail application. Most of the cases are of minor nature and he is on bail most of

them. He has no criminal history to his credit and is languishing in jail since 08.06.2016.

5. Learned A.G.A. and learned counsel for informant have vehemently opposed the prayer for bail of the applicant and they have submitted that it is a case of gruesome murder of two persons near the jail. Only because the applicant was not named in the FIR he cannot be released on bail. Bail application of co-accused, Raju Pahlwan, has been rejected by this Court 13.10.2023. They have relied upon the judgment of the **Apex Court in the cases of Neeru Yadav Vs. State of U.P. and Another 2015 Lawsuit(SC) 899 and Virupakshappa Gouda and Another Vs. State of Karnataka and Another 2017 Lawsuit(SC) 293** in support of their contentions that bail cannot be granted to the applicant.

6. Learned counsel for applicant has rejoined and submitted that subsequently bail applications of Sajju @ Kallu, Shailendra Yadav, Alok Kumar @ Kallu Yadav and Rakesh Kumar Yadav, have been allowed by different coordinate Benches of this Court vide bail applications Nos. 21113 of 2020, 38001 of 2021, 10201 of 2021 and 33119 of 2020 respectively. He has submitted that applicant cannot be kept behind bar indefinitely.

7. Regarding long incarceration of under trials prisoners in jail due to delay in conclusion of trial, the Hon'ble Apex Court in re: **Union of India vs. K.A. Najeeb reported in AIR 2021 Supreme Court 712** has held in Para 16 of the judgment being reproduced herein below as follows :-

"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 Undertrial Prisoners v. Union of India, it was held that undertrials 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."

8. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant, keeping in 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. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022*** and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime 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 with the following conditions that :-

(i) The applicant shall report his presence before police Station-Colonelganj, District- Allahabad, in first week of every month during pendency of trial before trial court.

(ii) The applicant shall not tamper with the evidence or threaten the witnesses.

(iii) 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.

(iv) 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.

(v) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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.

(vi) 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.

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

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

11. The court below is directed to conclude the trial against the applicant, as expeditiously as possible, preferably within a period of one year.

12. Registrar(Compliance) is directed to communicate this order to the concerned court below within ten days.

Order Date :-24.11.2023

Abhishek