

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32322 of 2022

Applicant :- Sanjay

Opposite Party :- State Of U.P.And 3 Others

Counsel for Applicant :- Jitendra Nath Tiwari,Prabhat Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Santosh Nigam, learned AGA for the State apprised the Court that on 07.06.2022 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Prabhat Kumar Singh, learned counsel for the applicant and Sri Santosh Nigam, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 2803 of 2018, under Sections 376, 452, 506 IPC & 3/4 POCSO Act, Police Station- Kavinagar, District- Ghaziabad, during pendency of the trial in the court below.
4. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 04.11.2020 but applicant is in jail in the present matter since 17.12.2018 i.e. for almost five years and till date, trial of the case could not be concluded. He further submitted that victim of the case has already been examined by the trial court, therefore, there is no chance of any tampering with the prosecution evidence.
5. He further submitted that according to the medical report, victim was around 17 years' old and before the lodgement of the FIR of the present case, uncle of the applicant had already lodged FIR under the provisions of POCSO act against the husband of the informant and only due to this enmity, applicant has been made accused in the present matter.

6. He further submitted that applicant is not having any criminal history.

7. Per contra, learned AGA opposed the prayer for bail and submitted that after considering the entire facts of the case, first bail application of the applicant was dismissed by this Court but could not dispute the fact that applicant is in jail in the present matter since December, 2018 i.e. for almost five years and he is not having any criminal history. He further could not dispute the fact that victim of the case has already been examined by the trial court.

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

9. However, this is the second bail application filed on behalf of the applicant and his first bail application has already been dismissed by this Court on merit on 04.11.2020 but from the record, it reflects that applicant is in jail since 17.12.2018 i.e. for almost five years and till date, trial of the case could not be concluded.

10. From the record, it further reflects that victim of the case has already been examined by the trial court.

11. Further, applicant is not having any criminal history.

12. The Apex Court in the case of ***Union of India Vs. K.N. Najeeb (2021) 3 SCC 713*** categorically observed that if fundamental right of speedy trial of an accused is violated then Court can consider his bail.

13. Therefore, considering the long incarceration of the applicant of about five years and the fact that victim of the case has already been examined by the trial court and there is no chance of any tampering with the prosecution evidence, in my view, applicant is entitled to be released on bail.

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

15. Let the applicant- **Sanjay** 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.

16. 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.

17. 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

KK Patel