

Court No. - 78

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 20400 of 2023

Applicant :- Nepal Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Bahadur Gupta, Anant Ram Gupta

Counsel for Opposite Party :- G.A., Digvijay Singh

Hon'ble Raj Beer Singh, J.

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

2. The present third bail application has been filed by the applicant-accused in case crime No. 155 of 2020, under Sections 147, 148, 149, 307, 302 IPC, P.S. Fatehabad, District Agra with the prayer to enlarge the applicant-accused on bail. The first bail application of applicant-accused was rejected by this Court vide order dated 10.08.2021, passed in Criminal Misc. Bail Application No.26440 of 2021 and the second bail application of applicant-accused was rejected by this Court vide order dated 30.11.2022, passed in Criminal Misc. Bail Application No. 39085 of 2022.

3. According to the prosecution version, on 24.06.2020 at 6:00 AM, while the first informant Devendra Singh along with one Kaptan Singh was working in his field, informant's brother Janardan has gone to attend the call of nature in the nearby field, at the same time, applicant, co-accused Mahipati @ Mahipal, Sripati, Akash, Dipak and Parath, armed with country made pistols, came and fired bullets at head and abdomen of deceased and thereafter all accused persons have fled away.

4. It has been argued by the learned counsel for the applicant that applicant is innocent and he has been falsely implicated in this case. The applicant is an old man aged 56 years and he is an ex-army personnel and that there is no cogent evidence against him. It has been submitted that on 07.05.2012 a first information report was lodged by applicant against Kaptan Singh and Janardan Singh (deceased of this case) under Section 435 IPC and that the applicant was falsely implicated due to that enmity.

5. Learned counsel for the applicant further submitted that first bail application of applicant was rejected by this Court vide order dated 10.08.2021, passed in Criminal Misc. Bail Application No.26440 of 2021 and thereafter, second bail application of applicant-accused was rejected by this Court vide order dated 30.11.2022, passed in Criminal Misc. Bail Application No.39085 of 2022. It was pointed out that the second bail application of applicant was rejected on the ground that after rejection of first bail application, the applicant has approached Hon'ble Apex Court by filing an SLP No.3236 of 2022 but the same was dismissed by the Hon'ble Apex Court vide order dated 21.04.2022. After rejection of second bail application, the applicant has filed S.L.P. No.3889 of 2023 against the rejection of second bail application and that S.L.P. was disposed of by the Hon'ble Apex Court vide order dated 20.03.2023, wherein Hon'ble Apex Court has held that this Court has not considered the subsequent change that identically placed co-accused persons have been granted bail and thus, the applicant was directed to approach this Court again and hence, this third bail application has been filed. Learned counsel submitted that similarly placed co-accused Parath, Akash, Sripati and Mahipati @ Mahipal have already been granted bail by co-ordinate Benches of this Court (the copies of orders of which, are available on record)

and that the case of applicant is on better footing than that of co-accused Mahipati @ Mahipal. It is further submitted that applicant is languishing in jail since 24.08.2020 and thus, he has already been undergone the detention of more than three years and that in case, the applicant is released on bail, he will not misuse the liberty of bail and co-operate in the trial.

6. Learned A.G.A. and learned counsel for the informant have opposed the prayer for bail, however, it has not been disputed that similarly placed co-accused persons have already been granted bail.

7. I have considered the rival submissions and perused the record.

8. It is apparent from record that after rejection of second bail application of applicant, the applicant has approached Hon'ble Apex Court by filing an SLP No.3889 of 2023, wherein by order dated 20.03.2023, Hon'ble Apex Court has passed the following order;-

"Delay condoned.

We have heard learned counsel appearing for the petitioner.

The bail application made by the petitioner was rejected by the High Court. Learned counsel for the petitioner submits that the only reason for which the High Court rejected the bail was that against the earlier order, the petitioner had preferred a special leave petition which was dismissed. It has also been submitted that the High Court without taking into consideration the subsequent change of circumstances where three of the identically placed accused whose role was similar to that of the petitioner have been granted bail, has dismissed his application.

Considering the facts and circumstances, we deem it appropriate that the petitioner should approach the High Court once again bringing this fact to the knowledge of the High Court and the High Court may consider the bail application afresh without being influenced by the dismissal of his earlier bail application by this Court.

With the aforesaid observations and directions, the special leave petition stands disposed of. Pending applications(s), if any, shall also stand disposed of."

9. Keeping in view of the aforesaid pronouncement of the Hon'ble Apex Court and considering the fact that similarly placed co-accused persons, namely, Parath, Akash, Sripati and Mahipati @ Mahipal have already been granted bail and the role of applicant is

similar to those co-accused persons and that the applicant is languishing in jail since 24.08.2020, thus, the applicant is entitled to be released on bail. Hence, the third bail application of applicant Nepal Singh is hereby **allowed**.

10. Let the applicant-accused **Nepal Singh** involved in aforesaid crime be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:

(i). The applicant-accused shall not tamper with the evidence during the trial.

(ii). The applicant-accused shall not pressurize/ intimidate the prosecution witness.

(iii). The applicant-accused shall appear before the trial court on the date fixed, unless personal presence is exempted.

(iv). The applicant-accused shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(v). The applicant-accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

11. In case of breach of any of the above condition, the Court concerned shall be at liberty to cancel bail of applicant-accused in accordance with law.

Order Date :- 13.10.2023

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