

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 23549 of 2018

Applicant :- Pratap @ Krishna

Opposite Party :- State of U.P.

Counsel for Applicant :- Shashi Kant Pandey, Araf Khan, Bindeshwari Prasad Mishra, Sajid Razi

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Araf Khan, learned counsel for the applicant, Sri Ram Prakash Shukla, learned AGA for the State and perused the material on record.
3. This is the second bail application under Section 439 of Code of Criminal Procedure filed by the applicant- Pratap @ Krishna, seeking enlargement on bail during trial in connection with Case Crime No. 1220 of 2016, under Sections 302, 392, 411 I.P.C. registered at P.S. Highway, District Mathura.
4. The first bail application of the applicant being Criminal Misc. Bail Application No. 18866 of 2017 was rejected vide order dated 06.12.2017.
5. On 30.5.2023 the following order was passed by a co-ordinate Bench of this Court which reads as under :-

"Heard learned counsel for the applicant and learned A.G.A for the State.

It is submitted by the learned counsel for the applicant that the applicant is languishing in jail since 20.12.2016, but the current status of the trial is not available.

Learned District Judge, Mathura is directed to submit a report with regard to the current status of the trial relating to Case Crime No.1220 of 2016 under Sections 302, 392, 411 IPC, Police Station Highway, District Mathura. It may also be reported that till now how many witnesses of fact has been examined and how many witnesses of fact and formal witnesses remained to be examined. The report be submitted in 2 weeks.

Office is directed to annexed the record of the first bail application in Criminal Misc. Bail Application No.18866 of 2017, which stands rejected vide order dated 06.12.2017.

List on 5th July, 2023."

6. Subsequently on 22.8.2023 the following order was passed by this Court which reads as under :-

"1. Sri Araf Khan, learned counsel for the applicant and Sri Bade Lal Bind, learned counsel for the State are present.

2. Short-counter affidavit filed by learned counsel for the State today in the Court is taken on record.

3. A report with regard to current status of the trial was called for vide order dated 30.05.2023 passed by a coordinate Bench of this Court. As per office report dated 26.07.2023/21.08.2023 the said report is awaited.

4. Office to send a reminder to the District and Sessions Judge, Mathura for compliance of the order dated 30.05.2023 by the next date.

5. Let the matter be listed on 22.09.2023."

7. On 22.9.2023 the following order was passed by this Court which reads thus:-

"1. List revised.

2. Heard Sri Araf Khan, learned counsel for the applicant and Sri Bade Lal Bind, learned counsel for the State.

3. Although a report of learned trial court has been received which is dated 21.08.2023 in which it is stated that the first informant, eye witness, doctor who conducting the postmortem and the inquest has been examined and as such four prosecution witnesses have been examined. The said report states in the present matter, the statement of the Investigating Officer is remaining to be recorded.

4. Further report may call for from the learned trial court specifically stating as to many other witnesses are remaining to be examined as learned counsel for the State submits that as per the charge sheet, there are 21 witnesses shown therein but the reading of the report dated 21.08.2023 shown that only first informant is remaining to be examined. The concerned trial court shall submit his/her report within a month.

5. Let the matter be listed on 27.10.2023.

6. Office to communicate this order to the concerned trial court within one week."

8. Office vide its report dated 21.09.2023 stated that status report has been received from the trial court stating therein that statements of 04 prosecution witnesses have been recorded and only statement of Investigating Officer is pending.

9. The report of the trial court was called for regarding status of the trial. The reports of the concerned trial court dated 21.8.2023 and 20.10.2023 which are on records, show that charges were framed in the matter on 02.11.2017 after which

from 02.2.2019 to 20.12.2022, 04 prosecution witnesses have been examined and the matter was fixed for 23.10.2023 for recording of statements of other prosecution witnesses.

10. Learned counsel for the applicant argued that the applicant is in jail since 20.12.2016 and as such has undergone 06 years and 10 months in jail. It is argued that since the trial has not been completed yet and there are other witnesses to be examined, there are no chances of it to be completed in near future. It is argued that the applicant has no other criminal antecedents as stated in para-28 of the affidavit. Learned counsel has placed before the Court the judgements of the Apex Court passed in the case of ***Praveen Rathore vs. State of Rajasthan and another: 2023 SCC OnLine SC 1268, decided on October 6, 2023*** and ***Javed Shah Abdul Shah vs. The State of Maharashtra and another: Criminal Appeal No. 3178 of 2023(@SLP (Crl.) No. 3370/2023) decided on October 12, 2023*** which are taken on record, to buttress the said arguments.

11. Per contra, learned State counsel opposed the prayer for bail.

12. After having heard learned counsels for the parties and perusing the record, it is evident that the trial in the present matter is going on in which only 04 prosecution witnesses have been examined till date. The applicant is in jail since more than 06 years and there are no chances of early conclusion of trial.

13. In this view of the matter a case for bail in favour of the applicant is made out.

14. Let the applicant- Pratap @ Krishna, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties (**out of which one surety should be the family member of the applicant and the other surety should be a local person**) each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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 will not misuse the liberty of bail in any manner whatsoever. 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., may be issued and if 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 I.P.C.

(V) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

15. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

16. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 27.10.2023

Naresh