

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36423 of 2020

Applicant :- Shriman Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Kameshwar Singh, Mahesh Prasad Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Pursuant to the order dated 3.10.2023 office submitted a report and from perusal of the report of Joint Registrar (criminal) dated 13.10.2023 as co-accused persons have filed Crl. Appeal Nos. 721 of 2009, 633 of 2009, 675 of 2009 and 1316 of 2009, therefore, record of the case was tagged alongwith these criminal appeals but the record has been transmitted back to the trial court on 12.10.2023.

2. Heard Sri Mahesh Prasad Yadav, learned counsel for the applicant and Sri Jhamman Ram, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 93 of 2007, under Sections 147, 148, 149, 302 IPC, Police Station Pailani, District Banda, 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 22.1.2020 by this Court vide Crl. Misc. Bail Application No. 3475 of 2020 and from perusal of the order dated 22.1.2020 passed by this Court it appears that as applicant was a previous convict and he absconded for about 12 years and he was having criminal history of nine cases, therefore, his first bail application was dismissed.

5. He further submitted that applicant in the present matter is in jail since 25.2.2019 i.e. for more than four and half years and till date due to non-availability of the record even charges could not be framed against him and therefore, without any fault of the applicant, trial of the case could not be even commenced.

6. He further submitted that if in criminal appeals filed by co-accused persons who were convicted, record of the case was tagged with those appeals then applicant cannot be held liable and it is a clear violation of article 21 of Constitution of India.

7. He placed reliance in the judgement of Apex Court passed in ***Union of India Vs. K.A. Najeeb (2021) 3 SCC 713*** and submitted that if without trial accused detained in jail for considerable period of time then he is entitled to be released on bail considering the violation of his fundamental rights of speedy trial provided under Article 21 of Constitution of India.

8. He further submitted that however, according to the office report, record of the case has been remitted back to the trial court on 12.10.2023 i.e. about 4 days before, but there is no hope of early disposal of trial and it is a case of Section 302 IPC and in the charge sheet, there are as many as 17 prosecution witnesses.

9. He further submitted that as case is of the year 2007, therefore, it will take long time to decide the trial of the applicant and therefore, considering the long incarceration of the applicant for four and half years, he may be enlarged on bail.

10. Per contra, learned AGA opposed the prayer for bail and submitted that this is the second bail application filed on behalf of the applicant and applicant is also a previous convict under section 302 IPC and he absconded for almost 12 years but he could not dispute the fact that the conviction was recorded against the applicant in the year 1983 i.e. way back about more than 40 years before and he also could not dispute the fact that out of criminal history of 8 cases in 7 cases, applicant has either acquitted or final report has been submitted in his favour.

11. He further could not dispute the fact that applicant in the present matter is in jail in the present matter for last more than four and half years and till date not even charges have been framed and record had been sent by the trial court to this Court in criminal appeals filed by co-accused persons after conviction.

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

13. This is second bail application filed on behalf of the applicant and his first bail application has been dismissed by this Court and from perusal of the order passed by this Court passed in the first bail application of the applicant, it reflects that on the ground that

applicant is a previous convict and he absconded for 12 years and he is having criminal history of 9 cases, his first bail application was dismissed.

14. From the supplementary affidavit filed alongwith the instant bail application, it appears that applicant convicted in the case under section 302 IPC in the year 1983 and in all the other cases, he has either already been acquitted or final report has been filed in his favour. Further, although it appears that he absconded for 12 years but he is in jail in the present matter since 25.2.2019 i.e. for more than four and half years.

15. Further, from the order passed by this Court on the first bail application dated 22.1.2020, it reflects that this Court directed the trial court to expedite the trial and conclude the same preferably within a period of six months but till date not even charges could be framed by the trial court. It further reflects from the record that other co-accused persons after conviction preferred criminal appeals before this Court and trial court record of the case was summoned by this Court and from the report of the J.R. (criminal) of this Court dated 13.10.2023, it appears that the record of the case could only transmitted back to the trial court on 12.10.2023 i.e. about four days before, therefore, I find force in the argument advanced by learned counsel for the applicant that there is no hope of early disposal of trial.

16. Further, in the charge sheet it appears that there are as many as 19 prosecution witnesses.

17. The Apex Court in the case of **K.A. Najeed (supra)** categorically observed that right to speedy trial is fundamental right of an accused and on its breach the Court can consider the bail application of the accused on his period of incarceration.

18. In the present matter, applicant is in jail for more than four and a half years and even trial of the case could not be commenced due to the reason that record of the case had been transmitted by the trial court to this Court pursuant to the order passed by this Court in criminal appeals filed by other accused persons and therefore, it appears that without any fault of the applicant even charge could not be framed.

19. Therefore, considering the facts and circumstances of the case, discussed above, in my view applicant who is in jail for last more than four and half years and there is no hope of early disposal of trial, in my view, applicant is entitled to be released on bail.

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

21. Let the applicant-**Shriman Singh**, 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.

22. 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.

23. 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 :- 16.10.2023

Ankita