

Neutral Citation No. - 2023:AHC:235793

Reserved On:- 08.12.2023

Delivered On:-12.012.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 25105 of 2023

Applicant :- Kanhaiya Alias Kanhai

Opposite Party :- State of U.P.

Counsel for Applicant :- Karunesh Pratap Singh

Counsel for Opposite Party :- G.A.,Pramod Kumar

Sahani, Sanjeev Kumar

Hon'ble Siddharth, J.

1. Heard Sri Karunesh Pratap Singh, learned counsel for the applicant; Sri Sanjeev Kumar, 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, **Kanhaiya Alias Kanhai**, with a prayer to release him on bail in **Case Crime No. 759 of 2020, under Sections 147, 149, 302, 411, 212, 201, 120B, 404, 34 IPC, Police Station – Chauri Chaura, District- Gorakhpur**, during pendency of trial.
3. This is the second bail application of applicant. The first bail application was rejected by this Court vide order dated 17.01.2023 directing the trial court to conclude the trial against the applicant within a period of one year.
4. Learned counsel for the applicant has submitted that the first bail application of applicant was rejected by this Court on the ground that there is evidence of Rs. 15 lakhs being taken by the applicant from the deceased which was the motive for committing murder of deceased by applicant. Absconding of applicant was another ground and lastly the bail was rejected on the ground that he was last seen in the company of deceased. Learned counsel for applicant has further submitted that there is no evidence of Rs. 15 lakhs being taken by the applicant from the deceased because the P.W. 2 (wife of deceased) has specifically stated in her examination before trial court that deceased had provided marble of worth Rs 15 Lakhs to applicant on credit from one businessman of Gorakhpur but she has not disclosed name of said businessman who had given the marble of worth Rs. 15 lakhs to the applicant. In entire investigation, Investigating Officer has not recorded any such statement of said

businessman. P.W-2. has also admitted that financial condition of the deceased was not very good therefore he was working with someone. How it is possible that marble of worth Rs.15 Lakhs shall supplied by some businessman on assurance of deceased on credit to applicant. After 2 months, 15 days of alleged incident investigating officer has recorded statements of Brijesh, Chandan and Sanoj, who claimed themselves as witness of last seen, when applicant was sitting in the car of deceased alongwith him. There is no explanation why they did not stated anything earlier. There is no eye witness of alleged incident and as per FIR version, when Dheeraj made phone call to deceased, he told him that he is going to Nautanwa with the applicant. Very surprisingly neither Investigating Officer has record the statement of Dheeraj nor he is the witness of charge sheet. At the time of filing of the missing report on 19.10.2020 at about 2:30 p.m. informant had not disclosed name of applicant but after recovery of dead body of deceased, only on the basis of suspicion name of applicant surfaced in present case along with other co-accused. On the basis of confessional statements of co-accused specific role has to be assign to applicant but as per section 25 of Evidence Act "No confession made to a police officer, shall be proved against a person accused of any offence". All the motive and dispute was regarding the borrowed goods worth Rs 15 Lakhs from some businessman of Gorakhpur. The name of said businessman was not disclosed who had given goods to applicant on the assurance of deceased. There are no CDR details collected by the investigating officer, which prove location and involvement of applicant in alleged crime. He is languishing in jail from more than 2 years and only 2 witnesses has been examined till date out of 47 witnesses and there is no possibility of conclusion of trail in near future. Applicant is languishing in jail since 01.11.2021.

5. Per contra learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre-trial stage, therefore, he does not deserves any indulgence. In case the applicant is released on bail, she will again indulge in similar activities and will misuse the liberty of bail.

6. 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. Najeer 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."

7. 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 not tamper with the evidence or threaten the witnesses.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

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

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

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

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

Order Date :-12.012.2023

Abhishek