

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 26716 of 2023

Applicant :- Rishi Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Mahendra Kumar Sharma, Atharva Dixit, Pavan Kishore, Pranav Tiwary

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

Heard Sri Manish Tiwari, learned Senior counsel, assisted by Sri Mahendra Kumar Sharma, learned counsel for the applicant as well as the learned AGA for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant, Rishi Kumar, with a prayer to release him on bail in Sessions Trial No. 464 of 2013, **Case Crime No. 60/2013, under Sections 302, 201, 224, 120-B, 34 IPC, Police Station- Bhogaon, District- Mainpuri**, during pendency of trial.

Learned Senior counsel for applicant has submitted that co-accused, Chandra Kumar, has been enlarged on bail by coordinate Bench of this Court vide bail application No. 1845/2023. The order aforesaid is quoted hereinbelow:-

" 1. The Court is sitting as a vacation Bench.

2. Heard Sri Manish Tiwari, learned Senior Advocate assisted by Sri Atharva Dixit, Advocate for applicant and Sri K.P. Pathak, learned AGA for State.

3. Applicant-Chandra Kumar has approached this Court by way of filing present bail application seeking enlargement on bail in Case Crime No. 60 of 2013, under Sections 302, 201, 224, 120B, 34 IPC, Police Station Bhogaon, District Mainpuri.

4. This Court passed following order on 29.05.2023:

Heard Sri Manish Tiwary, learned Senior Counsel assisted by Sri Atharva Dixit, learned counsel for applicant and Sri Sunil Kumar Srivastava, learned A.G.A.

This is a second bail application.

First bail application was rejected on 24.5.2019.

From the records it transpires that applicant before this Court is in jail since 20.4.2013 in the present case i.e. for a period of more than 10 years. It has also been brought on record that applicant was facing trial in another criminal case also and he has been convicted for Life Imprisonment and appeal thereof was filed before this Court wherein this Court has granted suspension of sentence taking note that applicant was in jail for more than ten years as well as taking note of judgment passed by Supreme Court in the case of Saudan Singh Vs. State of U.P. 2022 SCC Online SC 697 and Suleman Vs. the State of U.P. 2022 SCC Online SC 1042.

Further, it has been pointed out that out of 27 proposed witnesses, till date only four prosecution witnesses have been examined and out of which two have turned hostile in trial and except the applicant and another co-accused (brother of applicant), all other co-accused have been granted bail. It is further submitted that present applicant and his brother are confined in different jails.

In view of above referred facts, list this case on 6.6.2023 for further hearing at 12 Noon.

Meanwhile, Trial Court shall submit a report in regard to present status of trial which shall include number of proposed prosecution witnesses, number of witnesses examined and the delay in conclusion of trial which is pending for about 10 years.

Registrar (Compliance) to take steps.?

5. In compliance of above order, Trial Court has submitted report dated 03.06.2023 that till date four prosecution witnesses have been examined and presently testimony of PW-5, Investigating Officer, is underway.

6. Learned Senior Advocate appearing for applicant has referred the criminal history of applicant, which are mentioned in paras 35, 36 and 37 of the affidavit.

7. Learned AGA has opposed prayer for bail and submits that applicant is a menace to society, therefore, he may not be released on bail. However, facts referred above are not disputed.

8. In the present case, it is not in dispute that applicant is in jail for present offence since 20.04.2013, i.e., for about more than 10 years and that this Court has suspended the sentence in an appeal arising out of another case where he has been convicted and sentenced for life imprisonment.

9. Taking note of above circumstances, the period of incarceration and status of trial, which appears to be moving in snail's speed, applicant has made out a case for bail.

10. However, applicant is directed to remain present on each and every date as and when required by Trial Court during trial and in case any application for exemption on vague ground is filed, the same shall be a ground for Trial Court to cancel bail immediately.

11. Let the applicant-Chandra Kumar be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties 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 shall file an undertaking to the effect that he shall not seek any adjournment or exemption from appearance on the date fixed in trial. 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 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.

(iv) The Trial Court may make all possible efforts/endeavour and try to conclude the trial expeditiously, preferably within a period of six months after release of applicant, if there is no other legal impediment.

12. 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.

13. The bail application is allowed.

14. It is made clear that the observations made hereinabove are only for the purpose of adjudicating the present bail application. "

Learned Senior counsel for the applicant has further submitted that even otherwise the applicant is languishing in jail 20.04.2013. There is very remote possibility of early conclusion of trial. The applicant has criminal history of four cases to his credit explained in paragraph-17 of the supplementary-affidavit. He has been acquitted in one case and on bail in remaining three cases. Learned Senior counsel for applicant has submitted that the applicant is entitled to be enlarged on bail on the ground of parity with the co-accused, Chandra Kumar. He has submitted that while the co-accused was previous convict, the case of applicant stands on better footing since he is not previous convict. The applicant has been falsely implicated in this case.

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.

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."

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.

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

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

Order Date :- 6.12.2023

Abhishek