

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40951 of 2020

Applicant :- Sandeep Dixit @ Nanha Poot @ Neta Ji

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Samiuzzaman Khan

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mrs. Mohd. Samiuzzaman Khan, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This repeat application for bail has been filed by applicant- Sandeep Dixit @ Nanha Poot @ Neta Ji seeking her enlargement on bail in Case Crime No. 864 of 2021 under Sections 302, 201 I.P.C., Police Station-Naubasta, District-Kanpur Nagar, during the pendency of trial i.e. Sessions Trial No. 409 of 2012 (State Vs. Sandeep Dixit @ Nanha Poot @ Neta Ji) under Sections 302, 201 I.P.C., Police Station-Naubasta, District-Kanpur Nagar now pending in the Court of Additional District Judge, Court No.7, Kanpur Nagar

4. First bail application of applicant was rejected by this Court by an order dated 19.10.2016 passed in Criminal Misc. Bail Application No. 6946 of 2013 (Sandeep Dixit @ Nanha Post @ Neta Ji Vs. State of U.P.). For ready reference, order dated 19.10.2016 is reproduced herein under:

"वर्तमान दण्डिक प्रकीर्ण जमानत प्रार्थना पत्र आवेदक/अभियुक्त द्वारा मु० अ ० सं० 864 सन् 2011, अन्तर्गत धारा 302, 201 भा० दं० वि०, थाना नौबस्ता, जिला कानपुर नगर में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

आवेदक के विद्वान अधिवक्ता ने पूरक शपथपत्र दाखिल किया, इसे पत्रावली पर रखा जाय।

आवेदक के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि यह परिस्थितिजन्य साक्ष्य का मामला है तथा किसी ने आवेदक को मृतकाओं की हत्या करते नहीं देखा तथा आवेदक को मृतकाओं की हत्या करने का कोई हेतुक नहीं था, इसलिए उसके द्वारा मृतकाओं की हत्या करने की कोई संभावना नहीं है। यह भी बहस की गयी कि केवल रीना दुबे के सामने आवेदक के द्वारा टेलीफोन पर जुर्म का इकबाल करना बताया गया है, इसके अलावा आवेदक के खिलाफ और कोई साक्ष्य नहीं है तथा आवेदक दि० 31-10-2011 से जेल में है, इसलिए आवेदक को जमानत पर छोड़ दिया जाय।

विद्वान अपर शासकीय अधिवक्ता ने जमानत का विरोध करते हुए तर्क प्रस्तुत किया कि यह दोहरे हत्याकाण्ड का मामला है तथा आवेदक ने अपनी पत्नी तथा उसकी पुत्री जो उसके पहले पति से थी, की निर्मम रूप से हत्या करके, उनके शव की शिनाख्त न हो पाए, इसका प्रयास किया है तथा आवेदक ने अपनी पत्नी राजकुमारी का सिर काटकर बैग में रखकर आदित्य कुमार द्विवेदी के दरवाजे पर रख दिया तथा उसकी पुत्री कोमल का शव बोरी में बंद करके राजाराम के दरवाजे पर रख दिया तथा इन दोनों लाशों की शिनाख्त मृतका राजकुमारी की दूसरी पुत्री रीना दुबे ने की। यह भी बहस की गयी कि आवेदक की निशादेही पर घटना में प्रयुक्त गडासा व आरी भी बरामद हुयी है तथा आरी पर खून लगा हुआ पाया गया है तथा आरी से पत्नी का गला काटने का समर्थन उसके शव परीक्षण आख्या से भी होता है, इस प्रकार आवेदक के खिलाफ परिस्थितिजन्य साक्ष्य है, इसलिए आवेदक को जमानत पर न छोड़ा जाय।

विद्वान अपर शासकीय अधिवक्ता के तर्कों के परिप्रेक्ष्य में मामले के समस्त तथ्यों एवं परिस्थितियों को देखते हुए, वाद के गुण दोष पर बिना कोई टिप्पणी किए हुए, आवेदक/अभियुक्त को जमानत पर छोड़ना उचित प्रतीत नहीं होता है।

तदनुसार आवेदक सन्दीप दीक्षित उर्फ नन्हा पूत उर्फ नेता जी का जमानत प्रार्थना पत्र निरस्त किया जाता है।

विचारण न्यायालय के पीठासीन अधिकारी को निर्देशित किया जाता है कि वे इस मामले से संबंधित सत्र परीक्षण का निस्तारण, इस आदेश की प्रतिलिपि प्राप्त होने के बाद प्राथमिकता के आधार पर, यदि हो सके तो 6 माह के अन्दर करने का प्रयास करें। "

6. Learned counsel for applicant contends that though the applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. Applicant is jail since 31.10.2011. As such applicant has under gone more than 11 years and 11 months of incarceration. The trial against applicant commenced with the committal order dated 18.05.2012. Upto this stage all the prosecution witnesses of fact have not been examined even when there are as many as 47 witnesses nominated in the charge sheet. Applicant is in custody, therefore, applicant cannot be held

responsible for the delay in conclusion of trial. He has relied upon the judgement of **Apex Court in R. S. Nayak Vs. A.R. Antulay (1992) 1 SCC 275**. With reference to above she submits that an accused has the right to speedy trial. The delay in conclusion of trial cannot be attributed to applicant. He therefore submits that applicant is liable to be enlarged on bail. Attention of the Court was then invited to the judgement of Apex Court in **Saudan Singh vs The State Of Uttar Pradesh 2022 SCC OnLine SC 697** wherein the Apex Court has taken a view that if an applicant has remained under incarceration for a period of more than 10 years, he should be enlarged on bail. On the above premise, it is thus urged by the learned counsel for applicant that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

7. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named and charge sheeted accused therefore he does not deserve any indulgence by this Court. He further contends that applicant is guilty of causing murder of his wife and daughter by a sharp edged weapon and thereafter heads of the deceased were separated to make them unidentifiable. He therefore submits that considering the gruesome nature of the crime committed by applicant he does not deserve any sympathy by this court. However, he could not dislodge the factual and legal submissions urged by learned counsel for applicant with reference to the record at this stage.

8. Having heard the learned counsel for applicant, the learned A.G.A. for State and upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant coupled with the fact that applicant is in

jail since 31.10.2011, trial of the applicant commenced with the committal order dated 18.05.2012, in spite of the fact that a period of 11 years and 8 months has rolled by from the date of committal order, the trial of applicant has not yet concluded, there are 47 witnesses nominated in the charge-sheet, upto this stage statement of all the prosecution witnesses have not yet been recorded by the trial court, the judgement of Apex Court in A. R. Antulay (supra), since applicant is in custody therefore he cannot be held responsible for the delay in conclusion of trial and therefore irrespective of the submission raised by learned counsel for applicant in opposition to the present repeat application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

9. Accordingly, the present repeat application for bail is **allowed**.

10. Let the applicant-**Sandeep Dixit @ Nanha Poot @ Neta Ji** involved in aforesaid case crime number be released on bail on her 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) Applicant will not tamper with prosecution evidence.

(ii) 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) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

11. 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 of applicant and send her to prison.

Order Date :- 19.10.2023

YK