

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36737 of 2022

Applicant :- Viswas Chaudhary

Opposite Party :- State of U.P.

Counsel for Applicant :- Rakesh Dubey

Counsel for Opposite Party :- G.A., Adarsh Singh, Indra Raj Singh, R.P.S. Chauhan, Satya Prakash Singh

Hon'ble Pankaj Bhatia, J.

1. Heard Sri Rakesh Dubey, learned counsel for the applicant and Sri Raghuvansh Misra who appears for the informant.

2. The present case on an application being filed by the applicant, bail order was passed in favour of the applicant on 21.3.2023, whereby, this Court had enlarged the applicant on bail, however, it was provided that the trial court shall record the statement of the informant within a period of three months from the date of production of certified copy of this order and the applicant would be enlarged on bail after the statement of the informant is recorded by the trial court. The court further recorded that the applicant was in jail since 23.5.2022 and had no criminal antecedents.

3. Aggrieved against the grant of said bail, the informant had approached the Hon'ble Supreme Court by filing a Special Leave to Appeal Criminal No. 7005 of 2023. The said Leave to Appeal was disposed of vide order dated 24.9.2023, wherein, The Hon'ble Supreme Court remanded the matter for disposal afresh for making the following observations:

"Heard learned counsel for the petitioner, learned AAG for the respondent-State and learned senior counsel for the respondent No. 1 and perused the petition papers.

The complainant is before this Court assailing the order dated 21.03.2023 passed by the High Court whereby private respondent No.1 herein is ordered to be enlarged on bail. Though, the private respondent No.1 has filed his counter affidavit opposing the instant petition, having taken note with regard to the nature of the allegations against the private respondent No.1 and in that light, the previous history relating to the private respondent No.1 having involved in earlier cases, though the High Court while considering the bail application, has only indicated the reason that he was thereafter enlarged on bail in the earlier case and as such has thought it fit to grant the

bail, the nature of the case and the conduct has not been referred to in detail.

The matter requires further detailed consideration with regard to the nature of offence in which the private respondent NO.1 was involved earlier and in that circumstance, consideration is required to be made. Therefore, since all these aspects are not adverted to, the appropriate course we deem fit is to set aside the order dated 21.03.2023 and restore the Crl.Misc. Bail application No. 36737/2022 to the file of the High Court. The High Court may thereafter provide opportunity to all the parties and dispose of the application as expeditiously as possible. Since the private respondent has been enlarged on bail pursuant to the order dated 21.03.2023 and is presently on bail, the benefit of the same is extended for a period of six weeks. Thereafter, the High Court shall consider the matter as to whether the interim bail should be continued till the application is disposed of. The application be listed before the High Court on 30.10.2023 whereafter the High Court may regulate the further proceedings.

With the above observations, the special leave petition is disposed of.

Pending application(s) shall also stand disposed of."

4. In terms of the said remand the application is to be heard again.

5. The counsel for the informant argues that in terms of the remand order, the Hon'ble Supreme Court had clearly directed that there should be a detailed consideration with regard to the nature of offence in which the respondent (applicant herein) was involved earlier and in that circumstances consideration was required to be made by this Court before disposing of the bail application. On the basis of the said observation, Sri Mishra appearing on behalf of the informant argues that the applicant was acquitted in the criminal cases instituted against him merely on the basis that none of the witnesses were forthcoming. To clarify the said position, the orders, whereby, applicant was acquitted in the earlier cases instituted against him have been placed on record including Session Trial No. 1043 of 2005, judgment was delivered on 31.01.2007, wherein, the prosecution witnesses were turned hostile which led to exoneration of the applicant. In the Session Trial No. 703 of 2006 against the applicant under section 302/307 IPC in which the judgment was delivered on 19.4.2007. While delivering the judgement, the court had recorded that the prosecution witnesses had turned hostile and thus, the applicant was

exonerated in the trial. The Counsel for the informant further draws my attention to the judgement in the Session Trial No. 79 of 2006, wherein, the applicant was exonerated. In this case, PW-2 and PW-3 turned hostile and based upon the said, the applicant was exonerated vide judgement dated 15.1.2007.

6. He further draws my attention to the judgement in the case No. 3701 of 2006 instituted against the applicant under sections 386, 427 and 506 IPC, wherein, a judgement was delivered on 4.1.2007 and the applicant was exonerated based upon the prosecution witnesses turning hostile. He further draws my attention to the judgement in the case of 138 of 2008, wherein, by means of a detailed judgement dated 8.2.2013, applicant was convicted of an offence under Section 302/149 IPC.

7. In light of the said three judgments, it is argued that there is an apprehension that two chance witnesses, may be threatened not to depose in the trial and thus, he argues that the observations made by this Court while deciding the Bail Application No. 36737 of 2022 decided on 21.3.2023 should be extended till deposition of the two chance witnesses is also done. It is common ground in between the parties that the PW-1 has already been examined and thereafter the applicant was enlarged on bail.

8. Counsel for the applicant, on the other hand, argues that all the materials which were required to be placed could not be placed before the Hon'ble Supreme Court when the remand order was passed by the Hon'ble Supreme Court on 27.9.2023. He further argues that in all the earlier trials, as pointed out by the counsel for the informant, the applicant was exonerated as he was implicated subsequently and was not named in the FIR. He argues this to impress that apart from the apprehension that exists in the mind of informant, there is no material to form a view that the trial would not proceed impartially. He argues that in fact, the applicant has been convicted in an offence in a judgement delivered in the year 2013, thus the apprehension expressed by the informant is without any basis whatsoever.

9. Considering the submissions made at the bar this Court vide a detailed order dated 21.3.2023 had enlarged the applicant on bail and while doing so, the court was conscious that the informant should be examined prior to the release of applicant on bail and suitable directions were given by this court. While remanding the matter, the Hon'ble Supreme Court had expressed the view that the criminal antecedents of the applicant were not considered in the proper perspective while deciding the bail application on 21.3.2023 and thus, the matter was remanded.

10. In light of the arguments raised at the bar, the apprehension expressed by the informant are premised on the judgments which were delivered in the year 2007 wherein, the prosecution witnesses had turned hostile, subsequently in the year 2013, the applicant was convicted for life and thus, the apprehension that the witnesses may turn hostile are no more germane in view of the fact that the subsequent to the acquittal of the applicant he was also convicted after the appreciation of evidence.

11. Apart from the said apprehension, there is no material on record to demonstrate that any allegation of the applicant trying to impress the witnesses was made at any point of time so as to justify the apprehension as expressed by the counsel for the informant. Even otherwise in view of the law laid down by the Hon'ble Supreme Court in the cases of Smruti Tukaram Badade Vs. State of Maharashtra, 2022, Live Law SC 80 and Mahendra Chawla Vs. Union of India, Writ Petition No.156 of 2016 decided on 05.12.2018, it is open for the witnesses to seek protection in case of there being any valid ground for apprehension. The reasoning recorded in the order dated 21.3.2023 for grant of bail are well considered except for appreciation of the criminal antecedents and were not even doubted by the Supreme Court in the remand order dated 24.9.2023.

12. I have now considered impact of the earlier acquittal of the applicant based upon the witnesses turning hostile and have also dealt with the subsequent conviction of the applicant in the year 2013. Thus, for the reasons as recorded in the order dated 21.3.2023 and further after evaluating the criminal antecedents and the manner in which the applicant was acquitted and subsequently convicted, I am of the view that the applicant deserves to be enlarged on bail.

13. Applicant is enlarged on bail, the sureties furnished by the applicant in terms of the order dated 21.3.2023 shall apply in the present case also.

14. At this instance, the counsel for the informant argues that the applicant was misused his liberty after bail. If the same is correct, the informant would be at liberty to take such steps as may be advised under law for bail cancellation.

15. Before parting with the case, the trial court is directed to expedite the trial and to conclude the same with all expedition and to pass the necessary orders to protect the chance witnesses.

Order Date :- 31.10.2023
S.A.