

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37976 of 2022

Applicant :- Sonu @ Devendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Akhilesh Kumar Singh

Counsel for Opposite Party :- G.A.,Dhirendra Kumar Verma

Hon'ble Samit Gopal,J.

1. Heard Sri Akhilesh Kumar Singh, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on record.

2. Sri Dhirendra Kumar Verma, learned counsel for the first informant is not present even when the matter is taken in the revised list.

3. This is second bail application of the applicant. The first bail application of the applicant was rejected by this Court vide order dated 26.07.2021 passed in Criminal Misc. Bail Application No. 24577 of 2021 (Sonu @ Devendra vs. State of U.P.).

4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Sonu @ Devendra**, seeking enlargement on bail during trial in connection with Case Crime No. 296 of 2019, under Sections 498-A, 304-B, 506 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Shikarpur, District Bulandshahr.

5. On 25.09.2023 the following order was passed by this Court:-

"1. List revised.

2. Sri Akhilesh Kumar Singh, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State are present. Sri Dhirendra Kumar Verma, learned counsel for the first informant is not present.

3. Perused the records.

4. The argument of learned counsel for the applicant is that although this is the second bail application but while rejecting the first bail application of the applicant vide order dated 26.7.2021 passed in Criminal Misc. Bail Application No. 24577 of 2021 (Sonu @ Devendra Vs. State of U.P.), this court has expedited the trial and had directed the same to be concluded preferably within the period of six months. It is argued while placing the certified copy of the order-sheet from 24.2.2021 to 28.3.2022 and particularly the order dated 17.8.2021 that the order of this Court was filed before the concerned trial court of which the trial court was cognizant of it and as such has referred to it in the said order but despite the same except for P.W. 1 Naveen Kumar whose testimony was recorded before the trial on 30.11.2021, no other witness has been examined till date despite the trial court issuing Non-Bailable Warrant against them. It is argued that as such the applicant be granted bail on the ground of delay in the trial.

5. In order to appreciate the said argument it would be in the fitness of the things that the report of the trial court be called for through the District and Sessions Judge concerned regarding the status of trial, the number of witnesses to be examined, the number of witnesses examined till date, the reason for delay of trial and the non-compliance of direction of this Court given in the order dated 26.7.2021 and the approximate time which would be taken in conclusion of the trial.

6. Office to communicate this order within period of one week and the report to be sent within three weeks thereafter.

7. Let the matter be listed on 30.10.2023."

6. The office report dated 28.10.2023 states that in response to the order of this Court, a report has been received from the trial court stating therein that two witnesses out of 50 have been examined and the trial is pending at the stage of evidence. This Court has perused the report dated 17.10.2023 of the Additional Sessions Judge, Fast Track Court No.2, Bulandshahr duly forwarded by the District & Sessions Judge, District Bulandshahr. The said report is a detailed report. Perusal of the said report goes to show that in Point No.2 it is mentioned that 50 prosecution witnesses have to be examined as proposed by the prosecution. Further in Point No.3 it is stated that P.W.-1 Naveen Kumar the complainant was examined on 30.11.2021 after which P.W.-2 Ashish Kumar the other witness was examined on 29.07.2022. Since then no witness has been examined. Point No.4 gives reason for delay in trial and the reason for non-compliance of direction of this Court given in the order dated 26.07.2021. A perusal of the same goes to show that on maximum dates out of 70 dates mentioned therein either the Advocates were on strike or the witnesses were absent and Bailable Warrants / Non-Bailable Warrants were issued against them. With regard to the approximate time to be taken in conclusion of trial, the trial court in Point No.5 of its report has submitted that all possible actions are being taken by the court like Summon, Bailable Warrant, Non-Bailable Warrant, letter to S.S.P. are issued as per law, short dates are being fixed, unnecessary adjournments are being avoided and has assured the Court that it shall try to decide the case as expeditiously as possible.

7. The applicant is in jail since 17.07.2019. More than 04 years have been passed since then. The conduct of the witnesses as per the detailed report of the trial court in Point No.4 goes to show that they have not been appearing and have remained absent on quite a number of dates. There are 48 witnesses still left to be examined. The same would go to show that at this stage the trial will still take a lot of time.

8. In view of the detailed report of the trial court, efforts of the trial court to conclude trial at the earliest which cannot in any manner be said to be not efficient and not sincere for conclusion of trial at an early date and also for compliance of the direction of this Court given in the order dated 26.07.2021, the trial will take time to conclude, keeping the applicant in jail would not be in the fitness of things. He has already been in jail for more than 04 years.

9. In view of the same, let the applicant- **Sonu @ Devendra**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties (**one of the sureties will be of family members and the other will be of a local person**) 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 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) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) 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.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. 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.

11. The bail application is **allowed**.

12. The trial court shall continue to make its sincere efforts to conclude the trial at the earliest and ensure that no unnecessary adjournments are given to the accused persons including the applicant and if there is any default on the part of the applicant, the trial court is at liberty to cancel his bail forthwith and send him to jail.

13. This order is being passed without going into the merits of the matter, considering the detailed report of the trial Judge and specifically the condition mentioned therein regarding the conduct of the witnesses and delay in trial which is not attributed to the applicant.

Order Date :- 30.10.2023

AS Rathore

(Smit Gopal,J.)