

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31769 of 2023

Applicant :- Ankur

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Bhushan Tiwari, Anjali Singh Tomer, Inder Pal Singh Tomar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Anjali Singh Tomer, learned counsel for the applicant and Sri Ajit Kumar Madhesiya, learned brief holder for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 237 of 2016, under Sections 452, 302, 506, 34 IPC, Police Station- Kandhla, District- Shamali, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant and co-accused Ravi and according to the FIR, on 09.05.2016 when father of the informant was slipping in the *gher* in the afternoon then at about 2:00 p.m. applicant and co-accused arrived at his home and started making assault upon him through *balkati* and when after hearing the shriek of his father, informant arrived at spot then applicant and co-accused ran away towards forest. It is further mentioned, due to assault made by the applicant and co-accused, father of the informant died.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and it appears that nobody could witness the real incident and only due to enmity, applicant and co-accused Ravi has been made accused in the present matter.
6. He further submitted that applicant is not having any criminal history and he is in jail since 11.05.2016 i.e. for almost seven and half years and till date, trial of the case could not be concluded.

7. He further submitted that in the charge-sheet there are total 15 prosecution witnesses but till date only statement of P.W. 1 could be recorded by the trial court and therefore, it appears that trial of the case is moving with languid pace and there is no hope of its early disposal.

8. He placed the reliance upon the judgment of the Apex Court in the case of ***Union of India Vs. K.A. Najeer (2021) 3 SCC 713*** and submits, as per the Supreme Court, right of speedy trial is the fundamental right of an accused and in case of its violation, he is entitled to release on bail.

9. He further submitted that co-accused Ravi has already been released on bail by co-ordinate Bench of this Court on the ground of his long incarceration on 26.07.2023 passed in Criminal Misc. Bail Application No. 32742 of 2023. He placed the bail order of co-accused Ravi during the course of argument, which is taken on record and marked as 'A'. He further submitted that case of applicant is exactly at par with co-accused Ravi.

10. He further submitted that applicant is not having any criminal history.

11. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case of brutal murder and applicant and co-accused made assault upon the deceased through *balkati* and post-mortem report of the deceased suggests that deceased sustained as many as 12 injuries but could not dispute the fact that applicant is in jail for almost seven and half years and co-accused Ravi, on the ground of his long incarceration and delay in trial, has been released on bail and case of applicant is at par with him. He further could not dispute the fact that applicant is not having any criminal history.

12. I have heard learned counsel for the parties and perused the record of the case.

13. However, it appears that it is a case of eye-witness account and witnesses witnessed that applicant along with co-accused was making assault upon the deceased and they also witnessed them while they were running away from the spot, having *balkati* in their hands and post-mortem report of the deceased suggests that deceased sustained as many as 12 injuries but in the present case, applicant is in jail since 11.05.2016 i.e. for almost seven and half years and till date, out of 15 prosecution witnesses, only one prosecution witness could be examined and, therefore, I find force

in the argument advanced by learned counsel for the applicant that it appears that trial of the case is moving with languid pace and there is no hope of its early disposal.

14. Law is settled that right of speedy trial is the fundamental right of an accused and personal liberty of a person is the most cherished fundamental right given by the Constitution of India under Article 21 and the Apex Court in the case of *Union of India Vs. K.A. Najeeb(supra)* categorically observed that if there is violation of fundamental right of speedy trial of an accused then Court can consider this fact and release him on bail.

15. Further, co-accused Ravi has already enlarged on bail by co-ordinate Bench of this Court and case of applicant is at par with him and while granting bail to him this Court also consider the judgement of the Apex Court passed in ***Indrani Pratim Mukerjee Vs. Central Bureau of Investigation and another*** passed in *Special Leave to Appeal (Crl.) No. 1627 of 2022* and it appears that he was enlarged on bail on the ground of long incarceration and delay in trial.

16. Further, applicant is not having any criminal history.

17. Therefore, considering the long incarceration of the applicant for almost seven and half years and the fact that co-accused Ravi has been released on bail, in my view, applicant is entitled to be released on bail.

18. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

19. Let the applicant- **Ankur** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

20. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

21. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 6.11.2023

KK Patel