

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32117 of 2023

Applicant :- Iqbal Bahadur Singh And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Jai Singh Parihar

Counsel for Opposite Party :- G.A.,Ajay Sengar,Deepak Dubey

Hon'ble Siddharth,J.

Heard Sri Dharmpal Singh, learned Senior Counsel, assisted by Sri Jai Singh Parihar, learned counsel for the applicants; Sri Deepak Dubey, learned counsel for the informant; learned AGA for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicants, **Iqbal Bahadur Singh and Prashant Kumar Singh**, with a prayer to release their on bail in **Case No.1098 of 1999, Case Crime No. 311 of 1997, under Sections 302 & 201 IPC, Police Station Kotwali Orai, District- Jalaun**, during pendency of trial.

Learned counsel for the applicants has submitted that bail application of co-accused, Kaptan Singh, was heard by this Court on 31.7.2023 and following order was passed:-

1. Heard Sri Jai Singh Parihar, learned counsel for the applicant, Sri Vijay Singh Sengar, learned counsel for the informant and the learned A.G.A for the State.

2. The instant bail application has been filed on behalf of the applicant, Kaptan Singh, with a prayer to release him on bail in Case Crime No. 311 of 1997, under Sections- 302 and 201 IPC, Police Station- Kotwali Orai, District- Jalaun.

3. The prosecution case in short is that an information was given by one, Neeraj Kumar Tiwari, on 26.03.1997, informing the police that a dead body was lying in his field and on the basis of the same Case Crime no. 311 of 1997 under section 302/201 IPC was registered against unknown accused. The inquest proceedings was conducted. Thereafter, the dead body was cremated by the police after publication of the photograph in the newspaper. Subsequently, the deceased was identified as Neeraj Kumar Singh by his family members. On 05.04.1997, Smt. Chandra Prabha, mother of Neeraj Kumar Singh, made an application to the Senior Superintendent of Police, Orai alleging that her son, Neeraj Kumar Singh, must have been killed by the applicant, Kaptan Singh and co-accused persons, Prashant Singh and Iqbal Singh on account of earlier enmity. Her daughter, Ranjana was kidnapped by Prashant Singh and she later came back. On the basis of application of Chandra Prabha, a Case Crime No. 311 of 1997, under section 302/201 IPC was registered. Evidence of

witnesses were recorded by the investigating officer regarding the incident but nothing credible was found.

4. Learned counsel for the applicant submits that the investigating officer after investigation found that the father of the deceased, Neeraj Kumar Singh, namely, Chandraroop Singh, was closely associated with Meharban Gang of Madhya Pradesh being an active member of the gang and he was killed in police encounter at Bhind by the Madhya Pradesh Police. Investigating Officer also found that there may be motive of grabbing the property of Neeraj Kumar Singh in his murder. He was killed since he was the only male members in his family. The second investigating officer appointed for recording statement of some witnesses who stated that they have seen the applicant and other co-accused near Hanuman Temple in the vicinity where the dead body of the deceased was recovered. The statement of one, Rajendra Singh, was recorded who stated that he overheard the statement of accused persons confessing to the involvement of the applicant and co-accused, Vishwanath and Gajendra Singh, at the bus stand, Bhangra on 28.03.1997 and he had informed the mother of the deceased by going to her village on the same day. The second investigating officer again interrogated the witnesses, Kapoor Singh and Brij Pal Singh, who corroborated their statements earlier recorded. The investigation was thereafter transferred to CBCID and it prepared a charge memo recommending prosecution of the applicant by way of chargesheet no. 11 dated 02.02.1999. The charge sheet aforesaid was subjected to challenge before this court by way of Criminal Misc. Application No. 482 Cr.P.C No. 3573 of 1999 whereby the proceedings of the case were stayed on 30.08.1999. Thereafter, the aforesaid application was dismissed in default on 15.12.2011. The applicant claims that received the information of the dismissal of the aforesaid application in the month of April, 2023. After rejection of his anticipatory bail application by the court below, he surrendered on 28.06.2023 and is in jail since then. Counsel for the applicant also submits that the applicant is aged about 72 years and has retired from post of Principal in Intermediate College. He has no criminal antecedent and will cooperate with the trial.

5. Counsel for the informant has vehemently opposed the bail application and submitted that the daughter of the informant, Kumari Ranjana, was kidnapped by co-accused, Prashant Singh in the year 1994. Deceased, Neeraj Kumar was married to Smt. Sunita resident of village Narchha, District- Jalaun, and when he had gone to his wife's village, the applicant and co-accused got information and they murdered him. They had ran away to Madhya Pradesh and thereafter they could not be arrested. Since the year 1999, applicant was never arrested and is in jail only since 28.06.2023, and has large number of criminal cases against him, even in Madhya Pradesh. The only son of the informant has been murdered.

6. Learned A.G.A has vehemently opposed the submission of the counsel for the applicant

7. After hearing the rival contentions, this Court finds that the

application filed by the applicant under section 482 Cr.P.C were dismissed in the year 2011. He avoided the Court proceedings for 12 years and there is no explanation on record as to what happened during this period with reference to any material brought on record.

8. Accordingly, this Court has not inclined to grant bail to the applicant at this stage. Without making any comment on the merits of the case, the matter being old, trial court is directed to proceed with the trial expeditiously and make all efforts to conclude the same within period of nine months.

9. List this case on 20.05.2024.

10. Trial court will submit the report of the status of the trial on the next date.

Learned Senior Counsel for the applicants has submitted that bail of co-accused, Kaptan Singh, was not granted by this Court earlier on solitary ground of his long absence before trial court. He has further submitted that after the aforesaid order of this Court passed in bail application of co-accused, Kaptan Singh, trial has commenced. Charges have been framed. Before the trial court, PW-1 has been examined and examination of PW-2 is under progress. Thereafter two prosecution witnesses of fact namely, Govind and Shashi Prabha, remain to be examined. He has submitted that there is no clear allegation made against the applicant and co-accused in the FIR. The applicants are languishing in jail since 18.6.2023.

Learned counsel for the informant and learned A.G.A. have opposed the prayer for bail of the applicants by contending that the innocence of the applicants cannot be adjudged at pre trial stage, therefore, they do not deserve any indulgence. In case the applicants are released on bail they will again indulge in similar activities and will misuse the liberty of bail. Statements of all the four prosecution witnesses of fact have not been recorded as yet and there is possibility of tampering witnesses.

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 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; 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 applicants involved in the aforesaid crime be released on bail on their 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) After the statements of the PW-3 and PW-4, namely, Govind

and Shashi Prabha, are recorded the applicants shall be enlarged on bail.

(i-a) The applicants shall not tamper with the evidence or threaten the witnesses.

(ii) The applicants shall file an undertaking to the effect that they 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 applicants shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of their absence, without sufficient cause, the Trial Court may proceed against their under Section 229-A of the Indian Penal Code.

(iv) In case the applicants misuse the liberty of bail during trial and in order to secure their 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 their in accordance with law under Section 174-A of the Indian Penal Code.

(v) The applicants 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 applicants are 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 their 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 applicants and sureties be verified by the court concerned before the bonds are accepted.

The trial court is directed to record the statements of PW-3 and PW-4, within four weeks positively, without granting any adjournment from the date of production of certified copy of this order.

Order Date :- 13.12.2023

Ruchi Agrahari