

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33916 of 2023

Applicant :- Usman

Opposite Party :- State of U.P.

Counsel for Applicant :- Vikas Mishra, Swati Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

2. This is the third bail application moved on behalf of applicant. The first and second bail applications of the applicant were rejected by different coordinate Benches of this Court vide order dated 12.07.2019 and 17.11.2022 passed in Criminal Misc. Bail Application Nos. 41857 of 2017 and 38106 of 2022.

3. Learned counsel for the applicant submits that though there is allegation against the applicant along with other accused persons named in the F.I.R. as well as in the dying declaration of victim and in the statements of other witnesses, but during course of trial though one prosecution witness, P.W.1 has supported the prosecution case but another prosecution witness, i.e., P.W.2, who is sister of the victim/ deceased in her statement has not supported the prosecution case and has been declared hostile, which statement has been filed as Annexure-12 to the affidavit filed in support of the bail. Learned counsel for the applicant further submits that incident of the year 2016 and in the charge sheet there are total nine witnesses including two eye witnesses and one informant, and till date only two prosecution witnesses have been examined till date. Learned counsel for the applicant further submits that examination of other witnesses would take too much time and the applicant is in jail since 27.04.2017. It is submitted by learned counsel for the applicant that trial is progressing at a slow pace and has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of **Indrani Pratim Mukerjee Vs. Central Bureau of Investigation and another** passed in **Special Leave to Appeal (Crl.) No. 1627 of 2022** to submit that prolonged incarceration of a person as an under trial is against his fundamental rights under Article 21 of the Constitution of India. It

is contended that there is no occasion now for the applicant to tamper with any witness or to flee from judicial process. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It is further contended by learned counsel for the applicant that the applicant is languishing in jail since 27.04.2017, having no criminal history.

4. Learned A.G.A. for the State could not satisfactorily dispute the aforesaid submissions made by the learned counsel for the applicant.

5. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

6. Let the applicant-**Usman**, involved in S. T. No. 23 of 2017, arising out of Case Crime No. 613 of 2016, under Sections 147, 302 I.P.C., Police Station Shahabad, District Rampur, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the 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.

7. 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.

8. The bail application is allowed.

Order Date :- 16.12.2023

Mustaqeem.