

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50558 of 2022

Applicant :- Sujeet Pandey

Opposite Party :- State of U.P.

Counsel for Applicant :- Himanshu Giri

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 Himanshu Giri, learned counsel for the applicant and Dr. S. B. Maurya, learned AGA-I for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 21 of 2020, under Sections 147, 148, 302 IPC, Police Station Rudrapur, District Deoria, during pendency of the trial in the court below.
4. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application has already been dismissed on merit by this Court on 15.2.2022 and he is pressing the instant second bail application on the ground that applicant is in jail in the present matter since 27.1.2020 i.e. for more than three and half years but till date, trial of the case could not be concluded and from the record it appears that the trial of the case is moving with languid pace.
5. He further submitted that although in the charge sheet there are total 12 prosecution witnesses but till date only evidence of PW-1 could be recorded and testimony of PW-2 is being recorded.
6. He further submitted that it took several months to complete the testimony of the PW-1 and now PW-2 is not appearing before the trial court for last several months and this fact is evident from the order-sheet which has been annexed with the supplementary affidavit filed alongwith the instant bail application.
7. He placed reliance upon the judgement of the Apex Court in the case of *Union of India Vs. K.A. Najeeb (2021) 3 SCC 713* and submitted that right of speedy trial is fundamental right of

the accused and if its violated then he may be released on bail.

8. He further submitted that as without any fault of the applicant he is in jail in the present matter for more than three and half years and there is no hope of early disposal of the trial, therefore, applicant may be released on bail.

9. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case of direct evidence and after considering the entire facts of the case, the first bail application was dismissed by this Court and although it appears that trial of the case is moving with languid pace but applicant is in jail only for three and half years and minimum punishment provided for offence under section 302 IPC is life imprisonment which can be extended up to capital punishment and therefore, it would not be appropriate to release the applicant on bail merely on the basis of incarceration of about three years.

10. Learned AGA further submitted that trial court may be directed to conclude the trial of the case within a reasonable period of time.

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

12. Although, from the perusal of the record, it appears that applicant is not having any previous criminal history and he is in jail for more than three and half years and till date, out of total 12 prosecution witnesses only testimony of one prosecution witness could be recorded and statement of second prosecution witness is underway and it also appears that PW-2 is not appearing for last several months but as it is a case of direct evidence and allegation against applicant is that he caused fire arm injury to the deceased.

13. Further, however, right of speedy trial is a fundamental right provided in the Constitution of India under Article 21 and while deciding bail application the detention of the accused is relevant but in each and every case, merely on the basis of incarceration of three years, the accused should not be released on bail. There must be balance between the seriousness of allegations/charges with the period of custody suffered by accused. In case at hand, applicant is facing trial under section 302 IPC in which maximum punishment is capital punishment and charges against him is that he committed murder of the mother of informant.

14. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is not entitled to be released on bail.

15. Accordingly, the instant bail application stands ***rejected***.

16. However, considering the fact that applicant is in jail for more than three and half years, trial court is directed to conclude the trial of the case within ***eight months*** from the date of production of certified copy of this order strictly as per provision of section 309 Cr.P.C. on day-to-day basis without granting any unnecessary adjournment to either of the parties, if there is no legal impediment.

17. 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 :- 28.10.2023

Ankita