

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35320 of 2023

Applicant :- Rajesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Shyam Lal, Abhilasha Singh, Ashutosh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Ms. Abhilasha Singh, learned counsel for the applicant and Sri Santosh Nigam, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 100 of 2021, under Sections 323, 324, 325, 504, 308 IPC, Police Station- Dhanari, District-Sambhal, during pendency of the trial in the court below.

3. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 17.02.2023 and she is pressing the instant second bail application on the ground that applicant is in jail since 02.01.2023 i.e. for almost a year and it is a case in which, he detained for the offence under Sections 323, 324, 325, 504, 308 IPC and, therefore, considering the long incarceration of the applicant of almost a year, he may be enlarged on bail.

4. Per contra, learned AGA opposed the prayer for bail and submitted that after considering the entire facts of the case, the first bail application of the applicant was dismissed. He further pointed out that applicant is previous convict for the offence under Section 302 IPC and he is also having criminal history of two other cases and, therefore, he should not be released on bail.

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

6. However, from the record, it reflects that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 17.02.2023

and he is also having criminal history of two other cases but from the perusal of the record, it appears that in the present matter co-accused Ram Niwas is the person, who caused injury on the head of the principal injured.

7. Further, from the record, it also reflects that however, applicant was convicted for the offence under Section 302 IPC in the year 2007 but since then he did not indulge in any criminal activity except the present one and one another case and both the offences were of the year 2021 and, therefore, record, suggests that after released on bail during pendency of the appeal filed in the year 2008 since 2021, he was not having any criminal antecedents to his credit.

8. Further, applicant is in jail in the present matter since 02.01.2023 i.e. for almost a year.

9. Therefore, considering the facts and circumstances of the case discussed above, particularly the long incarceration of about a year, in my view, applicant is entitled to be released on bail.

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

11. Let the applicant- **Rajesh** 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.

12. 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.

13. 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 :- 5.12.2023
KK Patel