

Neutral Citation No. - 2023:AHC:201336

Reserved On:- 10.10.2023

Delivered On:- 18.10.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34988 of 2023

Applicant :- Indradev Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Anuj Srivastava, Shubham

Counsel for Opposite Party :- G.A., Rajesh Kumar Dubey, Santosh Kumar Mishra, A/R0360

Hon'ble Siddharth, J.

1. Heard learned counsel for the applicant; Sri Rajesh Kumar Dubey and Sri Santosh Kumar Mishra, learned counsels for the informant and learned A.G.A for the State.
2. This is third bail application of the applicant.
3. The first and second bail applications of the applicant was rejected by to coordinate Benches on 21.10.2021 and 31.08.2022 which are not available now.
4. Learned counsel for the applicant has submitted that the statement of injured witness, Tameshwar Mishra, has been recorded before the trial court as P.W.2 on 02.03.2023. In his statement, he has assigned the main role of causing fatal injury in the stomach of the deceased, Anuj Mishra by sickle (*hasiya*) to co-accused, Yogendra Yadav and he died. The injured has admitted that injuries to the injured persons were caused by applicant, co-accused, Yogendra, Ratan and Piyush. Injured witness has also admitted that dispute took place all of sudden and prior to the incident there was no apprehension of the alleged offence being committed. It has

further submitted that informant has not implicated the applicant clearly in her statement recorded as P.W.1 before the trial court. He has further submitted that five prosecution witnesses have been examined before the trial court till date. The applicant is in jail since 30.10.2020 and has no criminal history to credit. There is no possibility of early conclusion of trial. The applicant is old person aged about 80 years suffering from age related ailments and also retired government employee and has no criminal antecedents.

5. Counsel for the informant has vehemently opposed the bail application and has submitted that two bail applications of the applicant have already been rejected by this Court by reasoned orders. The bail application of co-accused, Ratan Yadav alias Ambuj Yadav, was rejected by this Bench on 17.02.2023 and hence the bail application of the applicant deserves to be rejected.

6. Learned A.G.A has also opposed the submission of the bail application.

7. After hearing the rival contentions, this Court finds that the earlier bail applications of the applicant and co-accused, Ratan Yadav alias Ambuj Yadav, were rejected by this Court prior to the recording of the statement of the injured witness, P.W.2, Tameshwar Mishra and P.W.3, Abhishek Mishra. They have not assigned the role of causing murder of the deceased, Anuj to the applicant. P.W.4, Deepak Mishra, has also not assigned role of causing murder of the deceased to the applicant. He has stated that the co-accused, Ratan Yadav, caused fatal injury by axe on the head of the deceased, Anuj. The applicant was generally implicated and assigned weapon by the aforesaid witness, Deepak Mishra. The statements of the witnesses referred above have been recorded after rejection of the first bail application of the applicant. Earlier his role was not clear.

8. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the 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 trial; 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., passed in S.L.P (Crl.) No. 5191 of 2021***; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

9. Let the applicant, Indradev Yadav, involved in Case Crime No. 261 of 2020, under Sections- 147, 323, 352, 148, 307, 302, 325, 120-B IPC, Police Station- Barahaj, District- Deoria, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he 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 applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence,

without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) 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. is issued and the 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 of the Indian Penal Code.

(v) The applicant 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 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.

10. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

11. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

12. Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of six months.

13. Registrar (compliance) is directed to communicate this order to the trial Court for necessary compliance within ten days.

Order Date :- 18.10.2023

Rohit