

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47081 of 2021

Applicant :- Pawan

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Kashyap

Counsel for Opposite Party :- G.A.,Awadhesh Kumar Srivastava

Hon'ble Sameer Jain,J.

1. Rejoinder affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Subhash Chandra Yadav, Advocate holding brief of Sri Ajay Kumar Kashyap, learned counsel for the applicant, Sri Awadhesh Kumar Srivastava, learned counsel for the informant and Sri Santosh Nigam, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 76 of 2019, under Sections 302, 34, 201 IPC, Police Station Bahedee, District Bareilly during pendency of the trial.
4. Learned counsel for the applicant submitted that this is second bail application filed on behalf of the applicant. The first bail application of the applicant was dismissed by this Court vide order dated 05.03.2020 but not on merit and first bail application of the applicant was dismissed on the ground that applicant failed to disclose his criminal history.
5. He further submits that it is a case of circumstantial evidence and name of applicant was disclosed by the informant in his second statement recorded under Section 161 Cr.P.C. by stating that co-accused Veerpal confessed his guilt before his relative Budhsen and Budhsen also informed him that he last seen the applicant and other accused persons along with deceased.
6. He further submits that when the statement of Budhsen was recorded then he also repeated the version of the second statement of the informant. He next submits that thereafter it is alleged that applicant was arrested and he confessed his guilt and after three

months a country made pistol was recovered but the same could not connect with the instant crime.

7. He further submits that applicant is having criminal history of eight cases but he has explained the criminal history in the instant bail application. He further submits that applicant is in jail since 31.03.2019 i.e. for more than four and half years and till date only three prosecution witness could be examined out of 17 prosecution witness.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

10. Although, this is second bail application filed on behalf of the applicant but first bail application of the applicant was not dismissed on merit and it was dismissed on the ground that applicant failed to explain his criminal history. It is a case of circumstantial evidence and from the record it reflects that only evidence against the applicant is the evidence of Buddhasen with regard to last seen evidence, his confessional statement and recovery of country made pistol from his possession but alleged recovered pistol could not be connected with the instant crime till date.

11. Although, applicant is having criminal history of eight cases but his criminal history has been explained in the instant bail application.

12. Law is settled that if otherwise case of bail is made out then merely on the basis of criminal history bail application should not be rejected.

13. Further, applicant is in jail for more than four years and till date out of 17 witnesses only three prosecution witness could be examined, therefore, it appears that there is no hope of early disposal of the trial.

14. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

15. Accordingly, without expressing any opinion on the merits of

the case, the instant bail application is **allowed**.

16. Let the applicant - **Pawan** 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.

17. 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.

18. 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 :- 13.10.2023

AK Pandey