

Neutral Citation No. - 2023:AHC:215791

RESERVED ON 30.10.2023

DELIVERED ON 7.11.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49736 of 2021

Applicant :- Rajendra Upadhyay

Opposite Party :- State of U.P.

Counsel for Applicant :- R P Rajan,Ashok Kumar Upadhyay,Prabha Upadhyay,Rajiv Lochan Shukla,Sanjay Singh,Udai Prakash Deo Pandey

Counsel for Opposite Party :- G.A.,Sunil Kumar Singh

Hon'ble Siddharth,J.

Heard Shri Rajiv Lochan Shukla, learned counsel for the applicant ; Shri Anil Srivastava, learned Senior Counsel assisted by Shri SunilKumar Singh, learned counsel for the informant as well as the learned AGA for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant, Rajendra Upadhyay, with a prayer to release him on bail in **Case Crime No. 227 of 2019, under Sections 302,307,34,504,506,120B,216,116 IPC, and section 4/25 Arms Act Police Station Chetganj, District- Varanasi**, during pendency of trial.

There is allegation in the First Information Report that today,i.e., 21.9.2019, at about 7.30 A.M., applicant Rajendra Upadhyay, co-accused, Rajat Upadhyay, son of the applicant and Pooja Mishra, wife of the applicant, with common intention abused the father of the informant and co-accused, Rajat Upadhyay fired on him.His mother

raised alarm and then the applicant and co-accused, Ram Vichar Upadhyay, on the exhortation of Pooja Mishra, fired on his mother. The firing was made by Pistol on the informant also but he luckily escape. After firing on his mother, co-accused, Ram Vichar Upadhyay, also caused injury to his mother by Chapad and they ran away. On the way to hospital, mother of the informant died. There is litigation pending between accused persons and informant side regarding partition of the house. The informant's side also lodged number of cases against the accused side.

Learned counsel for the applicant has submitted that one of the named co-accused, Pooja Mishra has already been enlarged on bail and number of other unnamed accused have also been enlarged on bail way back in 2020. Recovery of incriminating arm was allegedly made from pointing out of all accused persons. Learned counsel for the applicant has further submitted that although applicant has been assigned main role along with Ram Vichar Upadhyay by causing firearm injury to the mother of the informant but there is no forensic report corroborating that bullets recovered from the body of the deceased were fired from weapon recovered on the pointing out by the applicant. Applicant has been implicated in this case alongwith his two sons. He is in jail since 4.10.2019. Before the trial court, informant Sumit Upadhyay, has been examined as P.W.1 and statement of witness, Pradeep Kumar Mishra has been recorded as P.W.2. Trial is pending since the year 2020 but only two

prosecution witnesses have been examined. The cross examination of P.W.2 was only concluded after bailable warrant was issued against him. Applicant has criminal history of 15 cases explained in supplementary affidavit dated 12.12.2021. He has been discharged in some cases and in another cases he is on bail. Most of the cases are of minor offences. Parties are closely related. Trial will take time to conclude.

Learned Senior counsel for the informant has vehemently opposed bail application and has submitted that wife of the applicant is a greedy women. She wants to grab entire property of the informant. Trial could not proceed on account of adjournments taken by the accused on different dates. Discharge application regarding co-accused, Vatsal Upadhaya, was filed which took time and discharge application was filed by co-accused, Madan Lal, which also took time to disposal. Wife of the applicant is an advocate and she filed transfer application before the Sessions Judge and got the case transferred to different court. P.W.2 did not appear before the court because he is poor person residing in Calcutta. He has submitted that both the parents of the informant were done to death by the applicant and co-accused.. There is recovery of incriminating weapon from them. Father of the informant was a priest on Varanasi Ghat. He has pointed to the order sheet of the trial court in this regard which shows that accused persons have lingered the proceedings of the trial and bail can not be granted on the ground of delay.

Learned AGA has also opposed the prayer for bail of the applicant.

After hearing the rival contentions, this court finds that applicant is one of the main accused, who has been assigned definite role. There is also recovery of weapon on his pointing out. The conduct of the co-accused persons cannot come in the way of applicant in his release on bail. He is in jail since 4.10.2019. Trial will take time to conclude.

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* recent judgment dated 11.07.2022 of the 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

Let the applicant 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.

1. Applicant will report his presence before police station Chetganj District Varanasi in 1st week of every second month during the pendency of trial

2. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.

3. The applicant shall cooperate in the trial sincerely without seeking any adjournment.

4. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

5. That the applicant shall not, directly or indirectly, make any 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 to any police officer;

6. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 to ensure presence of the applicant.

7. 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

The trial court is directed to conclude the trial within a period one year.

The registrar(Compliance)of this court is directed to communicate this order to the trial court for compliance within two weeks.

Order Date :- 7.11.2023

Atul kr. sri.