

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37449 of 2023

Applicant :- Onkar Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Sikandar B. Kochar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Sikandar B. Kochar, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Onkar Singh seeking his enlargement on bail in Case Crime No. 166 of 1983, under Sections 147, 148, 307/149, 302/149 IPC, P.S. Civil Lines, District Etawah, during the pendency of trial.

At the very outset, the learned counsel for applicant contends that after completion of statutory investigation of aforementioned case crime number, Investigating Officer submitted charge sheet dated 9.11.1983, whereby two persons namely Mangal Singh and Munna @ Kishore Kumar were charge sheeted under Sections 148, 149, 302, 307, 147 IPC.

After submission of aforementioned charge sheet, cognizance was taken upon same by concerned Magistrate. As offence complained of is exclusively triable by Court of Sessions, consequently, concerned Magistrate committed the case to the Court of Sessions. As a result Sessions Trial No. 334 of 1997 (State Vs. Mangal Singh and another) came to be registered.

Subsequently, Investigating Officer submitted the supplementary charge sheet whereby applicant was also charge sheeted under Sections 148, 149, 302, 307, 147 IPC. After submission of aforementioned supplementary charge sheet, it appears that cognizance was taken upon the same by Chief Judicial Magistrate, Etawah. Accordingly, applicant was summoned, vide order dated 19.7.1985. Feeling aggrieved by the said order, the applicant approached this Court by means of Criminal Misc. Application

under Section 482 Cr. P. C. No. 12478 of 1985 (Onkar Singh Vs. State of U.P.). In the aforesaid application, this Court passed an interim order dated 20.9.1985. The same reads as under:-

"Admit. Issue notice.

Learned A.G.A. accepts notice on behalf of State. He prays for and is granted one months time for filing counter affidavit. Rejoinder if any may be filed within another three weeks.

List this application after expiry of the aforesaid period.

Meanwhile operation of the order dated 19th July 1985 of Chief Judicial Magistrate, Etawah and the arrest of applicant Sri Onkar Singh son of Sri Surendra Singh, resident of Harchandpur P.S. Kotwali, District Mainpuri in connection with Crime No. 166 of 1983, P.S. Kaswal, District Etawah under Sections 147, 148, 149, 307/302 IPC.

A copy of this order may be given to the learned counsel for applicant on payment of usual charges today."

According to the learned counsel for applicant, the aforesaid application was dismissed on 30.07.1990. However, Sessions Trial No. 334 of 1997 (State Vs. Mangal Singh and another) came to be decided, vide judgement and order dated 13.02.2023. The charge sheet co-accused were acquitted of the charges alleged against them. He, further, submits that the first informant did not participate in the trial.

On the above premise, the learned counsel for applicant contends that prosecution could not establish the very story, which it set out to prove against aforementioned charge sheeted accused. On the above conspectus, he, therefore, submits that no useful purpose shall be served by prolonging the custodial arrest of applicant during the pendency of trial.

According to the learned counsel for applicant, delay in the conclusion of trial of applicant has not occurred on account any deliberate act of applicant, but because of an interim order dated 20.9.1985 passed by this Court. He, therefore, submits that applicant is, therefore, liable to be enlarged on bail.

Even otherwise applicant appellant is a man of clean antecedents inasmuch he has no criminal history to his credit except the present one. Applicant is in jail since 10.07.2023. As such, he has undergone more than 2 months of incarceration. The police report in terms of Section 173 (2) Cr. P. C. having been submitted, therefore, entire evidence sought to be relied upon by the

prosecution against applicant stands crystallized, however, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he thus urged that applicant is liable to be enlarged on bail. In case, applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. has opposed the prayer for bail. However, he could not dislodge the factual/legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for state, upon perusal of record, evidence, complicity of the accused, accusation made, the nature and gravity of offence, coupled with the fact that the two of the charge sheeted accused namely Mangal Singh and Munna alias Kishore Kumar have already been acquitted of the charges framed against them, vide judgement and order dated 13.2.2003 passed in Sessions Trial No. 334r of 1997 (State Vs. Mangal Singh and another), the first informant himself did not participate in the proceedings of aforementioned trial, prima facie, the prosecution could not establish the very story which it set out to prove, there is no deliberate negligence on the part of the applicant in not participating in the proceedings before Court below, inasmuch as there was an interim order in favour of applicant, the clean antecedents of applicant, the period of incarceration, the police report in terms of Section 173 (2) Cr. P. C. having been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite of above, no such circumstance could be pointed out by the learned A.G.A. necessitating the custodial arrest of applicant during the pendency of trial, therefore irrespective of objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, the applicant has made out a case for bail.

Accordingly, the bail application is **allowed**.

Let the applicant **Onkar Singh** involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice :-

(i) The applicant shall file an undertaking to the effect that he shall

not seek any adjournment on the date 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.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..

(iii) 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., may be issued and if 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 I.P.C.

(iv) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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.

(v) The trial court may make all possible efforts/endeavour and try to conclude the trial within a period of one year after the release of the applicant.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his bail so granted by this court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 31.10.2023

HSM