

Court No. - 37

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38252 of 2023

Applicant :- Rajesh Tiwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Aishwarya Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot, J.

This is the second bail application.

Learned counsel for the applicant submits that on the pretext of the order of this Court to expedite the trial and conclude within the stipulated period of time the trial court has set all norms of fairness to wings. According to learned counsel the trial court is not granting time for cross examination of the witnesses.

Learned District Judge, Jhansi to examine the matter and send a fresh report before this Court.

The above observation do not operate adversely to the trial court in any manner.

By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 161 of 2021 at Police Station- Tahrauli, District- Jhansi under Sections 304/34, 120-B IPC. The applicant is in jail since 23.09.2021.

The first bail application of the applicant was rejected by this court on 15.07.2022.

The following arguments made by Sri Aishwarya Pratap

Singh, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Chandan Agarwal, learned AGA from the record, entitle the applicant for grant of bail:

1. The applicant is a law abiding citizen who cooperated in the investigation and has joined the trial proceedings. The applicant never tampered with the evidence nor did he influence any witness.

2. The trial is on foot. It is also contended that all material witnesses have been examined and only formal witnesses are yet to appear in the witness box.

3. Continued incarceration of the applicant will disable him from framing an effective defence strategy, gathering evidence in his support thereof and tendering the same before the learned trial court to absolve himself.

4. The applicant has explained his criminal history. It is contended that the applicant belongs to the economically poor strata of the society and is a convenient scapegoat for the police authorities. The applicant has been falsely nominated in a number of cases only to show the proficiency of the police investigators. The said cases do not have any bearing on the instant bail application.

5. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court

proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

This Court in **Prabhat Gangwar v. State of U.P. (Criminal Misc. Bail Application No.2586 of 2023)**

while considering the grant of enlarging an accused on bail for preparing his defence and gathering evidence to tender the same before the learned trial court for establishing his innocence held:

"Nature and gravity of the offence is certainly liable to be considered by the court while considering grant of bail. The Court has also to factor the likelihood of whether the accused committed the offence while deciding a bail application. The court also has to determine in the facts of the case whether the accused needs to be set at liberty to frame his defence and gather evidence to refute the prosecution case and establish his innocence. The bail court has to examine whether continued incarceration would disable the accused from tendering an effective defence of his case. This is a demand of processual fairness in criminal jurisprudence.

Setting an accused at liberty at large on this ground cannot be applied mechanically in all cases. The issue has to be considered in the facts and circumstances of each case while doing so. All relevant facts including the evidences in the record, the conduct of the accused during the investigation as well as trial have to be adverted to before a decision is made in this regard."

Considering the aforesaid parameters in light of the above facts of this case, I am of the opinion that the applicant is entitled for bail.

In wake of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- Rajesh Tiwari be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions

be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

Order Date :- 22.11.2023

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