

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39931 of 2023

Applicant :- Nazim @ Kaala

Opposite Party :- State of U.P.

Counsel for Applicant :- Zafar Abbas, Sarve Nazir

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Zafar Abbas, learned counsel for the applicant as well as Sri Sunil Kumar, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No. 969 of 2017, U/S 302, 201, 392, 411 IPC, Police Station Katghar, District Moradabad, during the pendency of trial.
4. This is the second bail application. The first one was rejected by this Court vide order 11.4.2023 and the following order was passed:-

"1. List has been revised.

2. Heard Sri Jafar Abbas, learned counsel for applicant and Sri R.P. Patel, learned A.G.A. for the State.

3. The present bail application has been filed by the applicant in Case Crime No.969 of 2017, under Sections 302, 201, 392, 411 IPC, Police Station Katghar, District Moradabad with the prayer to enlarge him on bail.

4. Learned counsel for the applicant has stated that this Court had passed a detailed order on 29.11.2019 and had directed the trial court to conclude the trial as expeditiously as possible. Learned counsel has further stated that during trial, only six prosecution witnesses could be examined. The applicant is not named in the FIR. His name has come up later on in the statement of the informant itself on the basis of information received from the other witnesses. The other witnesses, namely, Ruchi Parveen and Mushahid, are said to have seen the applicant with the deceased person as a last scene witnesses. Learned counsel has further stated that Mushahid has been examined in court as PW-4 and has not supported the prosecution story and resiled from his earlier statement and has been cross-examined by the public prosecutor after declaring him hostile. There is no likelihood of conviction of the applicant in the present case. The applicant is languishing in jail since 20.10.2017. The Fundamental Rights of the applicant stand violated enshrined under Article 21 of the Constitution of India.

5. Per contra, learned A.G.A. has vehemently opposed the bail application on the ground that PW-1 is the informant and has categorically reiterated

the allegations levelled before the Investigating Officer and has stated that he carried animosity with the applicant, he would have nominated them at the outset, but after gathering the information from the persons of the locality, he has deposed against them. Learned A.G.A. has further stated that the trial is at its conclusive end and the applicant is not entitled for bail.

6. After hearing the rival submissions advanced by learned counsel for the parties and taking into consideration the fact that already six witnesses have been examined and the trial is at its conclusive end and the star witness Ruchi Parveen could not be examined, I do not find it a fit case for grant of bail to the applicant.

7. The bail application is found devoid of merits and is, accordingly, rejected.

8. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously as early as possible in view of the principle as has been laid down in the recent judgments of the Apex Court in the cases of Vinod Kumar vs. State of Punjab; 2015 (3) SCC 220 and Hussain and Another vs. Union of India; (2017) 5 SCC 702, if there is no legal impediment.

9. 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."

5. Learned counsel for the applicant has stated that in light of the aforesaid order, the trial court had issued process for getting the statement of star witness Ruchi Parveen recorded but she has not appeared till date before the Court. The applicant is languishing in jail since 20.10.2017. The fundamental rights of the applicant stand violated as provided under Article 21 of the Constitution of India. Learned counsel has placed reliance on the judgement of the Supreme Court passed in ***Union of India v. K.A. Najeeb, (2021) 3 SCC 713.***

6. Learned counsel has next stated that there are 22 witnesses in the final report (charge sheet) filed by the investigating officer of which only four witnesses have been produced in Court. P.W. 4 Mushahir was examined and he has also not supported the prosecution story and has been declared hostile by the public prosecutor and cross-examined as such.

7. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further stated that there is no criminal history of the applicant. The applicant is languishing in jail since 20.10.2017. In case, the applicant is released on bail, he will not misuse the liberty of bail.

8. Learned A.G.A. has vehemently opposed the bail application but has not disputed the fact that there is no criminal history of

the applicant.

9. In light of the aforesaid arguments and the case law tendered at Bar, and keeping in view the nature of the offence, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India 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.

10. Let the applicant- **Nazim @ Kaala** who is involved in aforementioned case crime 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 evidence.

(ii) 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.

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

12. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 22.11.2023

Shalini