

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42014 of 2023

Applicant :- Anil Kumar Gautam

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjeev Kumar Khare

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Sanjeev Kumar Khare, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Anil Kumar Gautam seeking his enlargement on bail in Case Crime No.250 of 2022, under Section 304 IPC, police station Saraikhwaza, district Jaunpur, during the pendency of trial i.e. Sessions Trial No.397 of 2022 (State Vs. Anil Kumar), under Section 304 IPC now pending in the court of Sessions Judge, Jaunpur.

Record shows that in respect of an incident which is alleged to have occurred on 11.08.2022, a prompt first information report dated 11.08.2022 was lodged by first informant, namely, Ram Narayan Gautam (brother-in-law of the deceased) and was registered as Case Crime No.0250 of 2022, under Section 304 IPC, police station Saraikhwaza, district Jaunpur. In the aforesaid FIR, applicant Anil Kumar Gautam has been nominated as solitary named accused.

Perused the record.

At the very outset, learned counsel for applicant contends that after completion of statutory investigation of aforementioned case crime, Investigating Officer submitted the charge-sheet dated 29.08.2022, whereby applicant has been charge-sheeted under Section 304 IPC. After submission of charge-sheet, cognizance was taken upon same by the concerned Magistrate. As offence complained of is exclusively triable by the court of Sessions, concerned Magistrate committed the same to court of Sessions. As a result, Sessions Trial No.397 of 2022 (State Vs. Anil Kumar), under Section 304 IPC came to be registered and is now pending in the court of Sessions Judge, Jaunpur.

Learned counsel for the applicant contends that up to this stage, five prosecution witnesses (prosecution witness of fact), namely, PW-1 Ram Narayan @ Narayan (first informant/brother-in-law of the deceased); PW-2 Ram

Chandar; PW-3 Pramod Kumar; PW-4 Sochan Rai; and PW-5 Suresh Chandra have been examined before the court below. With reference to above, the learned counsel for applicant contends that none of the prosecution witnesses of fact have supported the FIR in their deposition before the court below. As such, they have been declared hostile. On the above premise, he therefore contends that no useful purpose shall be served in prolonging the custodial arrest of applicant

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 12.08.2022. As such, he has undergone more than one year and two months of incarceration. The police report under Section 173(2) CrPC has already been submitted. As such the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. In view of above and the facts noted above, no useful purpose shall be served in prolonging the custodial arrest of applicant. He, therefore, submits that the applicant is liable to be enlarged on bail. In case the 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 and 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 material brought on record, evidence, complicity of the accused, accusation made, nature and gravity of offence and coupled with the fact that five prosecution witnesses of fact detailed above who have deposed before the court below have not supported the FIR and therefore declared hostile, as such this Court finds that no useful purpose shall be served in prolonging the custodial arrest of the applicant, apart from above the court also finds that applicant is a man of clean antecedents having no criminal history to his credit except the present one, the applicant has been under incarceration since 12.08.2022, as such he has undergone more than one year and two months of incarceration therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail but, without making any comment on the merits of the case, the applicant has made out a case for bail.

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

Let the applicant **Anil Kumar Gautam**, 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 :- 3.11.2023.

Rks.