

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40344 of 2023

Applicant :- Varun

Opposite Party :- State of U.P.

Counsel for Applicant :- Pradeep Kumar Rai, Sr. Advocate

Counsel for Opposite Party :- G.A., Adil Khan

Hon'ble Siddharth, J.

List has been revised.

Heard Sri Kamal Krishna, learned Senior Counsel assisted by Sri Pradeep Kumar Rai, learned counsel for the applicant 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, **Varun**, with a prayer to release him on bail in **Case Crime No.211 of 2021, under Sections 147, 148, 149, 302, 307, 504 IPC, Police Station Parikshitgrah, District- Meerut**, during pendency of trial.

This is second bail application of the applicant. The first bail application of the applicant was rejected by co-ordinate Bench of this Court on 16.5.2022, which is not available.

Learned counsel for the applicant has submitted that while rejecting the first bail application of the applicant, co-ordinate Bench of this Court directed to the court below to conclude the trial of the aforesaid case expeditiously, preferably within six months. The copy of the order was filed on 7.11.2022 but the trial has not been concluded till date. The applicant has been falsely implicated in this case. He is languishing in jail since 14.3.2021. Co-accused, Mohit @ Chhotu, has been enlarged on bail by this Court vide order dated 8.11.2023 in Criminal Misc. Bail Application No.43844 of 2023 by detailed order, which is quoted below:-

"1. Heard Sri Kamal Krishna, learned Senior Counsel assisted by Sri Pradeep Kumar Rai, learned counsel for the applicant; Sri Adil Khan, learned counsel for the informant and learned A.G.A for the State.

2. There is allegation in the FIR that the FIR lodged by Dimple, wife of deceased, Deepak, that her husband had enmity with Bholu son of Sanjay Tyagi. On 20.06.2021, at about 09:00 p.m., when the husband of the informant, Deepak, was passing from the house of Mahendra along with Ashok @ Neetu son of Harveer, he was fired upon by country made pistol and assaulted by sariya and other weapons by Arvind @ Macchi, Mohit @ Amit @ Lala, Varun son of Rakesh, Mohit @ Chhotu son of Rakesh and an unknown accused. All of them abused the deceased and with common object attacked her husband. After hearing the noise informant, Dimple, Sanjay son of Harveer, reached the scene of incident. Before them her husband was fired upon by accused which resulted in death of her husband, Deepak, on spot and Ashok @ Neetu, got seriously injured.

3. Learned Senior Counsel for the applicant submits that it is a case of false implication. He has submitted that the information about the incident was first given by one, Shubham son of Sanjay to police station by phone and subsequently FIR was lodged. He has submitted that information was given to the police station-Parikshitgarh at 09:09:40 hours on 20.06.2021. FIR was lodged by the wife of the deceased on 21.06.2021 at 00:44 hours. He has submitted that in the information given to the police by Shubham he has clearly stated that two unknown persons have fired on the deceased and his condition is serious and he also stated that it is not known who has caused the aforesaid incident. Shubham is son of P.W-2, Sanjay.

4. Learned Senior Counsel for the applicant has pointed out to the statement of P.W-2, Sanjay, father of Shubham who has admitted that at the time when the information was given to the police station the deceased, Deepak, had already died and injured, Ashok was lying in injured condition. He was present along with his son at the time when his son made call to the police station. He has not explained why his son did not inform the names of the accused to the police station then.

5. Learned Senior Counsel for the applicant has also submitted that claim of informant, Dimple, that she had seen the incident and then she has lodged the FIR is incorrect. In his statement, P.W-2, he has not stated that Dimple was also present at the place of incident when the alleged incident took place. He has also submitted that Dimple, the first informant stated in the FIR that she had reached the scene of incident and thereafter the deceased was fired upon and he died. In her statement before the Court she has stated that when she reached the scene of incident she came to know that her husband had died, which is contradictory.

6. Learned Senior Counsel for the applicant has finally submitted that the implication of the applicant is doubtful from the testimony of P.W-1 and P.W-2 recorded before the trial court. The applicant is in jail since 24.06.2021 and has criminal history of two cases explained in paragraph 31 of the affidavit in support of the bail application. The investigating officer has not made Shubham a witness in the charge sheet. There are 20 prosecution witnesses detailed in the charge sheet. Three prosecution witnesses have been examined till date. Trial will take more time to conclude.

7. Counsel for the informant, Sri Adil Khan, has vehemently opposed the bail application. He has submitted that co-accused, Arvind @ Macchi, was enlarged on bail vide Criminal Misc. Bail Application No. 34111 of 2023 which has been stayed by the Apex Court vide S.L.P (Criminal) Diary NO. 33592 of 2023. He has further submitted that the trial is on the verge of conclusion and bail may not be granted to the applicant.

8. On the other hand learned A.G.A has also opposed the prayer for bail.

9. After hearing the rival contention and noting the discrepancies in the statements of P.W-1 and P.W-2 and also the status of trial, the applicant deserves to be enlarged on bail.

10. 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 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.

11. Let the applicant, Mohit @ Chhotu, involved in Case Crime No. 211 of 2021, under Sections- 147, 148, 149, 302, 307, 504 IPC, Police Station- Parikshitgarh, District- Meerut, 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 the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) 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. is issued and the 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 of the Indian Penal Code.

(v) 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 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.

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

13. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

14. Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of one year.

15. Registrar (compliance) is directed to communicate this order to the trial Court for necessary compliance within ten days."

Learned counsel for the applicant has submitted that the case of the applicant stands on identical footing, hence the applicant is also entitled for bail. Before the trial Court, two prosecution witnesses out of 29 have been examined. The applicant has criminal history of three cases explained in bail application.

Per contra learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserves any indulgence. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant; keeping in view 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; larger

mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of **Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022** and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid 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 with the following conditions that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 of the Indian Penal Code.

(v) 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 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.

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

Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 2.12.2023
Ruchi Agrahari