Court No. - 37

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40861 of 2023

Applicant :- Tufail
Opposite Party :- State of U.P.
Counsel for Applicant :- Shahroze Khan
Counsel for Opposite Party :- G.A.,Maya Pati Pandey

Hon'ble Ajay Bhanot,J.

By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No.183 of 2022 at Police Station-Kathela Samay Mata, District-Siddharth Nagar under Sections 302, 201, 34 IPC. The applicant is in jail since 27.10.2022.

The bail application of the applicant was rejected by the learned trial court on 03.02.2023.

The following arguments made by Shri Mohd. Jafar Abbas Khan, learned counsel holding brief of Shri Shahroze Khan, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Maya Pati Pandey, learned counsel for the informant and Shri Paritosh Kumar Malviya, learned AGA-I 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 prosecution evidence has been concluded.

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 does not have any criminal history apart from this case.

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-Tufail 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.

In case the applicant adopts dilatory tactics or impedes the progress of the trial, the learned trial court shall record a finding to this effect and cancel the bail granted to him without recourse to this Court.

However, the trial court is directed to conclude the trial within a period of one year from the date of receipt of a certified copy of this order. The learned trial court shall proceed with the hearing on a day to day basis to ensure that the above stipulated timeline of one year is strictly adhered to. All witnesses and counsels are directed to cooperate with the trial proceedings.

The trial court has also to be conscious of the rights of the accused persons and is under obligation of law to ensure that all expeditious, necessary and coercive measures as per law are adopted to ensure the presence of witnesses. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

The learned trial court shall issue summons by regular process as per Section 62 Cr.P.C. and also by registered post as provided under Section 69 Cr.P.C. to expedite the

trial.

The learned trial court shall promptly take out all strict coercive measures against all the witnesses in accordance with law who fail to appear in the trial proceeding. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

The police authorities shall ensure that warrants or any coercive measures as per law taken out by the learned trial court to ensure that the attendance of the witnesses are promptly executed.

The Superintendent of Police, Siddharth Nagar shall file an affidavit before the trial court on the date fixed regarding status of execution of the warrants/service of summons taken out by the learned trial court.

In case there is a failure on part of the police authorities to execute the warrants or other coercive measures, the Superintendent of Police, Siddharth Nagar shall state the reasons for the same in the said affidavit and also show the steps taken to execute the warrants. The Superintendent of Police, Siddharth Nagar shall simultaneously inform the Additional Director General of Police (ADG) Gorakhpur Zone, about the aforesaid failure of the police authorities in the first instance to execute the warrants and coercive

measures issued by the learned trial court. If required, the Additional Director General of Police (ADG) Gorakhpur Zone, may issue an appropriate directions to ensure that the warrants issued are promptly executed by the learned trial court.

The delay in execution of warrants and consequent absence of witnesses is one of the principal causes of delays in criminal trials and has to be addressed effectively by all stakeholders.

The trial judge shall submit a fortnightly report on the progress of trial and the steps taken to comply with this order to the learned District Judge.

The District Judge, Siddharth Nagar shall submit a compliance report regarding the status of the trial and the steps taken to comply with the orders of this Court after every month before the Hon'ble Administrative Judge.

A copy of this order be communicated to the learned trial judge through the learned District Judge, Siddharth Nagar by the Registrar (Compliance) by FAX.

Order Date :- 5.12.2023
Ashish Tripathi

Digitally signed by :-
ASHISH NAYAN TRIPATHI
High Court of Judicature at Allahabad