

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 55935 of 2021

Applicant :- Ajay Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjeev Kumar Singh

Counsel for Opposite Party :- G.A., Vijay Kumar Gupta

Hon'ble Sameer Jain, J.

1. Heard Sri Sanjeev Kumar Singh, learned counsel for the applicant, Sri Vijay Kumar Gupta, learned counsel for the informant and Sri Manoj Kumar Singh, learned brief holder for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 633 of 2020, under Sections 364-A, 302, 201, 120-B, 34, 420, 467, 468, 471 IPC, Police Station- Pipraich, District- Gorakhpur, during pendency of the trial in the court below.

3. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed by this Court on 21.01.2021 and he is pressing the instant second bail application mainly on the ground that it is a case of circumstantial evidence and except the confessional statement of the applicant and recovery of Aadhar Card and slipper of the deceased from the shop of the applicant, there is no other evidence against the applicant on record.

4. He further submitted that applicant is not having any criminal history and he is in jail since 27.07.2020 i.e. for more than three years.

5. He further submitted that in the charge-sheet, there are as many as 16 prosecution witnesses and out of them only two prosecution witnesses could be examined, therefore, it appears that trial of the case is moving with languid pace and there is no hope of its early disposal and, therefore, considering the long incarceration of the applicant and slow speed of the trial, applicant may be enlarged on bail.

6. Per contra, learned AGA opposed the prayer for bail and submitted that this is the second bail application but could not dispute the fact that it is a case of circumstantial evidence and applicant is in jail for more than three years and till date, out of total 16 prosecution witnesses only two could be examined by the trial court.

7. I have heard learned counsel for the parties and perused the record of the case.

8. Although, this is the second bail application filed on behalf of the applicant and his first bail application was dismissed by coordinate Bench of this Court but it appears that applicant is in jail for more than three years.

9. Further, from the record, it reflects that on 13.10.2023 trial court was directed to submit a report with regard to current status of the trial and now status report is on record and from its perusal, it appears that out of total 16 prosecution witnesses, only 2 could be examined till date and, therefore, it appears that trial of the case is moving with languid pace and there is no hope of its early disposal.

10. Further, from the record, it further reflects that it is a case of circumstantial evidence and except the confessional statement of the applicant and recovery of slipper and Aadhar Card of the deceased from the shop of the applicant, there is no other evidence on record.

11. Further, applicant is not having any criminal history.

12. Further, the Apex Court in the case of ***Union of India Vs. K.A. Najeeb (2021) 3 SCC 713***, observed that if there is violation of fundamental right of speedy trial of an accused then bail applicant of the accused can be considered.

13. Therefore, considering the facts and circumstances of the case discussed above, in my view applicant is entitled to be released on bail.

14. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

15. Let the applicant- **Ajay Gupta** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with

the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

16. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

17. 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.

Order Date :- 3.11.2023

KK Patel