

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42285 of 2023

Applicant :- Janu Pradhan (John Mohammad)

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Kumar Yadav, Alok Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Alok Kumar Singh, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 871 of 2017, under Sections 364, 302, 201, 120-B, 34 IPC, Police Station- Loni Border, District- Ghaziabad, 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 on merit by this Court on 29.08.2022 and he is pressing the instant second bail application on the ground that it is a case of circumstantial evidence and applicant is in jail since 05.05.2018 i.e. for last more than five and half years and till date, trial of the case could not be concluded.

4. He further submitted that as per the prosecution case, dead body of the deceased was recovered on the joint pointing out of the applicant and co-accused Mursleen and Irfan from the plot of the applicant and after rejection of the first bail application of the applicant, bail application co-accused Mursleen has been allowed by another co-ordinate Bench of this Court vide order dated 22.05.2023. He placed the bail order of co-accused Mursleen during the course of argument, which is taken on record and marked as 'A'. He further submitted that co-accused Irfan had also already been released on bail by another co-ordinate Bench of this Court on 06.11.2019. He further submitted that except the fact that recovery of dead body was made from the plot of the applicant, on other facts, case of applicant is at par with co-accused Mursleen and Irfan, therefore, considering the facts and circumstances of the case argued above, applicant should also be enlarged on bail.

5. He further submitted that applicant is not having any previous criminal history to his credit.

6. Per contra, learned AGA opposed the prayer for bail and submitted that this is the second bail application filed on behalf of the applicant but could not dispute the fact that after rejection of the first bail application of the applicant, bail application of co-accused Mursleen has been allowed by co-ordinate Bench of this Court on 22.05.2023. He further could not dispute the fact that on the joint pointing out of the applicant, co-accused Mursleen and Irfan, dead body of the deceased was recovered.

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

8. However, this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 29.08.2022 and from the record, it reflects that when applicant and co-accused Mursleen and Irfan were arrested then they confessed their guilt and on their joint pointing out dead body of the deceased was recovered from the plot of the applicant but from the record, it reflects that bail application of co-accused Irfan had already been allowed way back in the year, 2019 by co-ordinate Bench of this Court and co-accused Mursleen has also granted bail by co-ordinate Bench of this court on 22.05.2023 i.e. after rejection of the first bail application of the applicant.

9. Further, it is a case of circumstantial evidence and applicant is in jail for last more than five and half years and there is no hope of early disposal of the trial.

10. The Supreme Court in the case of ***Union of India Vs. K.A. Najeeb (2021) 3 SCC 713*** observed that right of speedy trial is the fundamental right of an accused and on its violation, accused may be released on bail.

11. Therefore, considering the observation made by the Apex Court in case of ***K.A. Najeeb (supra)*** coupled with the fact that applicant is in jail for last more than five years and it is a case of circumstantial evidence and two other accused persons have already been released on bail, in my view, applicant is entitled to be released on bail.

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

13. Let the applicant- **Janu Pradhan (John Mohammad)** 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.

14. 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.

15. 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 :- 4.12.2023

KK Patel