

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42571 of 2023

Applicant :- Mahavir

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Sushil Kumar Tewari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Sushil Kumar Tewari, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.
3. Sri Pradeep Kumar, learned AGA submits that notice has been served upon the informant on 03.10.2023.
4. Despite service of notice, none has appeared on behalf of the informant.
5. The instant bail application has been filed on behalf of the applicant seeking release on bail in Case Crime No. 49 of 2016 under sections 363, 366, 376D IPC and 3/4 of POCSO Act, Police Station Asmoli, District Sambha.
6. Learned counsel for the applicant submits that this is second bail application filed on behalf of the applicant and the first bail application has been dismissed on merit by Co-ordinate Bench of this court on 19.4.2018 vide Crl. Misc. Bail Application No. 7904 of 2018 and he is pressing the instant second bail application on two grounds. The first ground is that applicant is languishing in jail since 25/6/2016 i.e. for almost seven and a half years and till date, trial of the case could not be concluded. He further submits that till date, statement of PW2 i.e. the victim could not be even completed.
7. The next ground is with regard to younger sister of the informant. He submits, applicant and one another co-accused faced trial for offence under section 302 IPC as according to the prosecution, the deceased and her sister had gone along with the

applicant and co-accused Neetu but in case under section 302 IPC, when one of the victim of the present case i.e. another sister of the informant appeared before the trial court, then she did not support the present case and categorically stated that neither the deceased (deceased in that case) nor she had gone either with the applicant or co-accused Neetu and applicant and co-accused Neetu have been acquitted by the trial court on 21/5/2022. The acquittal order has been appended along with the instant bail application as Annexure No.4. He further submits therefore considering the above mentioned new grounds, applicant may be enlarged on bail.

8. He further submits applicant is not having any criminal history and he is in jail since 25/6/2016 i.e. for almost seven and a half years.

9. Per contra, learned A.G.A. opposed the prayer for bail and submit that this is second bail application filed on behalf the applicant but he could not dispute the fact that with regard to murder of one of the victim, applicant and another co-accused were faced trial under section 302 IPC in which they have already been acquitted on 21/5/2022 on the ground that another victim who survived did not support the prosecution case during trial and stated that neither the disease nor she had gone either with the applicant or co-accused Neetu. Learned AGA further could not dispute the fact that the applicant is in jail in the present matter since 25/6/2016 i.e. for almost seven and a half years. He further could not dispute that applicant has no criminal history to his credit.

10. I have heard all sides and perused the record of the case.

11. However, this is second bail application filed on behalf of the applicant and his first bail application has been been dismissed by this Court earlier on merits but it appears that applicant is in jail since 25/6/2016 in the present matter i.e. for almost seven and a half years and till date, trial of the case could not be completed. From the record, it appears that till date not even statement of the victim could be completed and, therefore, it appears that trial of the case is moving with languid pace and there is no hope of its early disposal.

12. From the record, it further reflects two sisters of the informant alleged to have gone along with the applicant and co-accused Neetu and out of them, one sister was alleged to have been murdered by the applicant and co-accused Neetu but when sister of the deceased i.e. one of the victim who survived, appeared before

the court concerned in the case under section 302 IPC, she stated that neither she nor her sister (deceased in that case) had gone along with the applicant or co-accused Neetu and after considering the evidence on record, the trial court acquitted the applicant and co-accused Neetu on 21/5/2022.

13. Therefore, considering the facts and circumstances of the case as discussed above, particularly, the fact that applicant is in jail for almost seven and a half years and he is not having any criminal history to his credit, I am of the view that applicant is entitled to be released on bail.

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

15. Let the applicant **Mahavir** 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 conditions, the prosecution will be at liberty to move an application before this Court for cancellation of 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 :- 4.12.2023

Madhurima