

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42485 of 2023

Applicant :- Shahid

Opposite Party :- State of U.P.

Counsel for Applicant :- Vijay Bahadur

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Vijay Bahadur, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. These application for bail has been filed by applicant-**Shahid**, seeking his enlargement on bail in Case Crime No.559 of 2016, under Sections 302, 201, 394, 412 and 420 IPC, Police Station-Kotwali Hathras Gate, District-Hathras during the pendency of trial.

4. The first bail application of applicant was dismissed in default for want of prosecution vide order dated 17.05.2022 passed in Criminal Misc. Bail Application No.8798 of 2019. For ready reference, the same is reproduced hereinunder:-

"None appears on behalf of applicant even in revised call.

The application is dismissed in default."

5. Record shows that in respect of an incident, which is alleged to have occurred on 04.11.2022, a delayed F.I.R. dated 05.11.2022 was lodged by first informant-Raj Kumar and was registered as Case Crime No.559 of 2016, under Sections 302, 201, 394, 412 and 420 IPC, Police Station-Kotwali Hathras Gate, District-Hathras. In the aforesaid F.I.R. a solitary unknown person has been arraigned as solitary accused.

6. After completion of statutory investigation of aforementioned case crime number, Investigating Officer submitted charge sheet dated 16.10.2017 whereby applicant Shahid Mohammad and Muzahid @ Bure have been charge sheeted under Sections 302,

201, 394, 412 and 420 IPC. After submission of the above-mentioned charge sheet, cognizance was taken upon same by the concerned Magistrate. However, as offence complained of is exclusively triable by court of Sessions, concerned Magistrate, consequently committed the case to the court of Sessions. Resultantly, Sessions Trial No.329 of 2017 (State of U.P. Vs. Shahid Mohammad and others) came to be registered in the Court of Sessions Judge, Hathras.

7. Learned counsel for applicant submits that though applicant is a named and charge sheeted accused yet he is liable to be enlarged on bail. Applicant is in jail since 15.08.2017. However, inspite of fact that applicant has been under incarceration for more than 6 years and 2 months, the trial has not yet concluded. With reference to the order sheet of concerned sessions trial, learned counsel for applicant submits that the charges were framed against charge sheeted accused vide framing of charge order on 06.02.2018. Inspite of the fact that a period of 5 years almost 8 months has rolled by from the date of framing of charge order not a single eye-witness has appeared before Court below to give his evidence. It is then contended that since applicant in custody he cannot held responsible for the delay in the conclusion of trial. According to the learned counsel for applicant an accused has also a fundamental right of speedy trial. To butteress his submission, learned counsel for applicant has relied upon the judgment of the Supreme Court in **A.R. Antulay Vs. R.S. Nayak, 1992 (1) SCC 225**. On the above premise, he therefore, submits that applicant is liable to be enlarged on bail.

8. Per contra, the learned A.G.A. has opposed the prayer for bail. Attention of the Court was invited to the order sheet of the leading Sessions Trial which has been brought on record by means of supplementary affidavit filed by the learned counsel for applicant in Court today.

9. With reference to above, it is urged that the trial Court could not proceed only on account of the fact that either adjournment was prayed by the prosecution or exemption for appearance was filed by accused before Court below. He therefore, submits that there is no deliberate negligence or laches on the the part of the prosecution in pursuing aforementioned trial. He therefore, contends that inspite of the aforesaid peculiar facts and circumstances of the case the ratio laid down by the Supreme Court in the case of **A.R. Antulay (Supra)** is not attracted in the present case. As such, no good or sufficient ground exists to enlarge the applicant on bail.

10. When confronted with above, the learned counsel for applicant could not overcome the same.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made and complicity of applicant coupled with the fact that inspite of the fact that applicant is under incarceration since 15.08.2017, however as per the order sheet the Court finds that the trial has been delayed on account of exemption for appearance prayed by other co-accused for appearance before Court below, therefore, it cannot be said that there is laches on the part of the prosecution in pursuing the trial.

12. As a result, present application for bail fails and is liable to be rejected.

13. It is accordingly **rejected**.

Order Date :- 3.11.2023

Imtiyaz