

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42844 of 2023

Applicant :- Chandra Pal Kushwaha

Opposite Party :- State of U.P.

Counsel for Applicant :- G.S. Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri G.S. Chauhan, learned counsel for the applicant, Sri R.P. Patel, learned A.G.A. for the State and perused the material placed on record.
3. This is the third bail application on behalf of the applicant. The first one was rejected by this Court vide order dated 16.12.2015 and the second one was rejected by this Court vide order dated 18.01.2023.
4. Applicant seeks bail in Special Case No.76 of 2015, Case Crime No.124 of 2015, under Sections 302, 394 and 411 I.P.C., Police Station Lachhura, District Jhansi, during the pendency of trial.
5. Learned counsel for the applicant has stated that about ten months have passed since the rejection of the second bail application of the applicant and no witnesses have been examined. The applicant is languishing in jail since 16.07.2015, as such he is incarcerated for a period of eight years and three months. The fundamental rights of the applicant enshrined under Article 21 of the Constitution of India stand violated. Learned counsel has further stated that only six witnesses have been examined, of which, PW-6 was declared hostile and there are nineteen witnesses mentioned in the charge-sheet, as such there is no likelihood of the early conclusion of trial. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. In case, the applicant is released on bail, he will not misuse the liberty of bail.
6. Learned counsel for the applicant has placed reliance on the judgment of Apex Court passed in the case of **Union of India vs. K.A. Najeeb, AIR 2021 SC 712**, as such the applicant is entitled for bail on the basis of period of incarceration.

7. Learned A.G.A. has vehemently opposed the bail application but could not dispute the facts regarding the period of incarceration of the applicant.

8. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

9. Let the applicant- **Chandra Pal Kushwaha**, who is involved in aforementioned case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the Trial Court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A IPC.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C., may be issued and if applicant fails to appear before the Court on the date fixed in such proclamation, then, the Trial Court shall initiate proceedings against him, in accordance with law, under Section 174-A IPC.

(iv) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

10. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

11. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 17.10.2023

Ravi Kant

(Krishan Pahal, J.)