

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 54304 of 2022

Applicant :- Furkan

Opposite Party :- State of U.P.

Counsel for Applicant :- Syed Ahmed Faizan, Syed Mohd Taqi Abdi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri S.F.A. Naqvi, learned Senior Advocate assisted by Sri S.M.T. Abdi, learned counsel for the applicant and Dr. L.B. Maurya, learned AGA-I for the State.
2. The instant bail application has been filed on behalf of the applicant seeking release on bail in Case Crime No. 688 of 2018 under sections 302, 328, 201 IPC, Police Station Banna Devi, District Aligarh.
3. 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 by this Court on 05.12.2019 and he is pressing the instant application on the ground that applicant is in jail since November, 2018 i.e. for almost five years and till date trial of the case could not be concluded.
4. He further submits that in the chargesheet there are as many as 19 prosecution witnesses and out of them, till date, only four witnesses could be examined by the trial court, therefore, it appears that trial of the case is moving with a very slow speed and there is no hope of early disposal of the trial.
5. He further submits that it is a case of circumstantial evidence and except the last seen, there is no other evidence on record against the applicant. He further submits that applicant is not having any previous criminal history to his credit and co-accused Imran has already released on bail by Co-ordinate Bench of this Court vide order dated 16.12.2022 passed in Crl. Misc. Bail Application No. 57588 of 2022 and case of the applicant is at par with him.

6. *Per contra*, learned A.G.A. opposed the prayer for bail and submits this is second bail application filed on behalf of the applicant and the first bail application was dismissed by this Court on merit but he could not dispute that it is a case of circumstantial evidence and except the last seen, there is no other evidence on record against the applicant and applicant is in jail since 13.11.2018 i.e. for almost five years.

7. I have heard both the parties and perused the record of the case.

8. This is second bail application filed on behalf of the applicant and during pendency of the instant second bail application, this Court, on 18.07.2023, directed the S.S.P. concerned to apprise the Court whether the CCTV which captured the commission of offence by the applicant is part of prosecution evidence or not and in case the same is not being introduced as prosecution evidence, reason for its violation and action taken against the defaulting officer should also be disclosed in the affidavit.

9. Pursuant to the order dated 18.07.2023, S.S.P. concerned has filed his personal affidavit and from para 13 of the same, it appears that in the alleged CCTV footage, complicity of the applicant could not be revealed and pursuant to the order passed by this Court, an inquiry has been conducted and inquiry report has been sent to D.G.P., Lucknow for disciplinary action against the erring officer.

10. Therefore, it appears from the record that except the last seen, there is no other evidence on record against the applicant and he is in jail since 13.11.2018 i.e. for almost five years.

11. Further, applicant is not having any previous criminal history to his credit and co-accused Imran has been released on bail by Co-ordinate Bench of this Court vide order dated 16.12.2022 and case of the applicant is at par with him.

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

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

14. Let the applicant **Furkan** 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.

15. 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.

16. 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 :- 26.10.2023

Madhurima