

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43957 of 2023

Applicant :- Narayan @ Ram Narayan

Opposite Party :- State of U.P.

Counsel for Applicant :- Daya Shanker Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot,J.

This is the second bail application.

By means of the the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 79 of 2017 at Police Station- Kotwali Padrauna, District- Kushi Nagar under Sections 147, 304, 120-B IPC. The applicant is in jail since 25.08.2017.

The first bail application of the applicant was rejected by this Court on 29.01.2020.

The following arguments made by Shri Daya Shanker Pandey, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Rishi Chaddha, learned AGA from the record, entitle the applicant for grant of bail:

1. The delay in lodgment of the FIR in the facts and circumstances of the case is fatal to the prosecution case.
2. The deceased was rushed to the hospital who died after 4 days during medical treatment.
3. The death was due to medical negligence.

4. There is no direct evidence against the applicant.

5. At best, this is a case of circumstantial evidence. The chain of incriminating circumstances against the applicant is not complete.

Shri Rishi Chaddha, learned AGA submits that this is a second bail application and no argument on merit can be made.

Faced with this, learned counsel for the applicant submits as follows:

I. The applicant is a law abiding citizen who cooperated with the police investigations and had joined the trial.

II. The applicant never influenced any witness nor did he tamper with the evidence.

III. The status report sent by the learned trial court records that the prosecution proposes to examine 17 witnesses to bring home the charges. Till date only 12 witnesses have been examined.

IV. The trial is moving at a snail's pace and is not likely to conclude anytime in the near future. The applicant is not responsible for the delay in the trial.

V. Inordinate delay in concluding trial had led to virtually an indefinite imprisonment of the applicant without there being any credible evidence to implicate him in the offence and violates the rights of the applicant to

speedy trial.

VI. Continued incarceration of the applicant will disable him from framing an effective defence strategy, gathering evidence in his support thereof and tendering the same before the learned trial court to absolve himself.

VII. The applicant does not have any criminal history apart from this case.

VIII. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

IX. This Court in **Prabhat Gangwar v. State of U.P. (Criminal Misc. Bail Application No.2586 of 2023)** while considering the grant of enlarging an accused on bail for preparing his defence and gathering evidence to tender the same before the learned trial court for establishing his innocence held:

"Nature and gravity of the offence is certainly liable to be considered by the court while considering grant of bail. The Court has also to factor the likelihood of whether the accused committed the offence while deciding a bail application. The court also has to determine in the facts of the case whether the accused needs to be set at liberty to frame his defence and gather evidence to refute the prosecution case and establish his innocence. The bail court has to examine whether continued incarceration would disable the accused from tendering an effective defence of his case. This is a demand of processual fairness in criminal jurisprudence.

Setting an accused at liberty at large on this ground cannot be applied mechanically in all cases. The issue has to be considered in the facts and circumstances of each case while doing so. All relevant facts including the

evidences in the record, the conduct of the accused during the investigation as well as trial have to be adverted to before a decision is made in this regard."

Considering the aforesaid parameters in light of the above facts of this case, I am of the opinion that the applicant is entitled for bail.

In wake of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- **Narayan @ Ram Narayan** be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

Order Date :- 18.10.2023

Jaswant