

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45233 of 2023

Applicant :- Krishna

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

Counsel for Applicant :- Shri Ram Pandey, Ankit Mishra, Bhaiya Ram Narayan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. Learned counsel for the applicant submits that the applicant has been falsely implicated in the charges levelled against him. The F.I.R. was lodged after eight days of the incident against the applicant and four other persons, but after investigation charge sheet was filed only against the applicant. Learned counsel for the applicant further submits that there are material contradictions in the statements of the victim recorded under Sections 161 & 164 Cr.P.C. Learned counsel for the applicant further submits that till date statements of two witnesses, i.e., P.W.1-complainant and P.W.2-victim has been recorded and there is no chance of tampering as the victim has already been examined. It is submitted by learned counsel for the applicant that trial is progressing at a slow pace and has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of **Indrani Pratim Mukerjea Vs. Central Bureau of Investigation and another** passed in **Special Leave to Appeal (Crl.) No. 1627 of 2022** to submit that prolonged incarceration of a person as an under trial is against his fundamental rights under Article 21 of the Constitution of India. It is submitted that there is no occasion now for the applicant to tamper with any witness or to flee from judicial process. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem

fit to impose upon him. It is further contended by learned counsel for the applicant that the applicant is languishing in jail since 09.09.2018, having no criminal history.

3. Per contra, learned AGA opposed the prayer for bail but admitted the facts that the applicant is in jail since last five years.

4. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

5. Let applicant- **Krishna**, involved in Case Crime No. 549 of 2018 (Session Trial No. 607 of 2018), under Sections 363, 366, 376, 506 I.P.C., and Section 3/4 of POCSO Act, Police Station Kasya, District Kushinagar, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the complainant in any manner whatsoever.

(ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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 I.P.C.

(V) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

6. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

7. The bail application is **allowed**.

Order Date :- 27.10.2023

Mustaqeem.