

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53425 of 2019

Applicant :- Nazru @ Nazar @ Nazar Mohd.

Opposite Party :- State of U.P.

Counsel for Applicant :- Sharad Kumar

Srivastava,A.C.Srivastava,Anand Kumar Mishra,Bhishm Pal
Singh,Rajiv Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri A.C. Srivastava, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 360 of 2017, under Sections 302 IPC, Police Station Parikshatgarh, District Meerut, during pendency of the trial in the court below.

3. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant. The first bail application of the applicant has been dismissed on 6.3.2018 by this Court on merit and instant second bail application is being pressed on the ground that although applicant is husband of the deceased and his wife died due to strangulation but applicant is in jail in the present matter since 22.7.2017 i.e. for more than 6 years and till date, trial of the case could not be concluded.

4. He further submitted that from the perusal of the order sheet of the case, it appears that trial of the case is moving with languid pace and from several months PW-2 is not appearing for her cross-examination.

5. He further submitted that in the charge sheet there are 20 prosecution witnesses and till date only one prosecution witness could be examined and cross-examination of PW-2 is underway.

6. He further submitted that right of speedy trial is a fundamental right of an accused and if there is its violation then accused is entitled to be released on bail.

7. He further submitted that applicant is having no previous criminal history to his credit.

8. Per contra, learned AGA opposed the prayer for bail and submitted that this is the second bail application filed on behalf of the applicant. The first bail application of the applicant has been dismissed on merit by this Court and it is a case in which wife of the applicant was murdered in her matrimonial home i.e. in the house of the applicant by strangulation and applicant miserably failed to explain the homicidal death of his wife and however, he is in jail in the present case for more than six years but he is facing trial under section 302 IPC in which minimum punishment is life imprisonment and therefore, merely on the ground of long incarceration, applicant should not be released on bail.

9. I have heard learned counsel for the parties and perused the record of the case.

10. This is the second bail application filed on behalf of the applicant. The first bail application of the applicant has been dismissed on merit by this Court. However, from the record it reflects that in the present matter applicant is in jail for more than six years and from the order sheet it appears that for several months PW-2 is not appearing and bailable warrants are being issued against her but from the previous order sheet it also reflects that on previous date when chief examination of PW-2 was recorded then on that day the counsel of applicant did not conduct her cross-examination. Further, from the order sheet of the case, it also reflects earlier also before framing charges the counsel for applicant failed to appear for several months.

11. Further, due to covid-19 pandemic almost two years were badly disturbed.

12. Further applicant is husband of the deceased and his wife died due to strangulation and applicant failed to explain the homicidal death of his wife.

13. Further although right of speedy trial is fundamental right of an accused and on its violation accused may be released on bail but there should be balance between period of incarceration, punishment provided and seriousness of the allegation. In case at hand, applicant is facing trial under section 302 IPC in which minimum punishment is life imprisonment and which can be extended up to the capital punishment and allegation against applicant is quite serious.

14. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant, who is however in jail

since 22.07.2017 is not entitled to be released on bail, at this stage.

15. Accordingly, the instant bail application stands rejected, at this stage.

16. However, considering the fact that applicant is in jail for more than six years, trial court is directed to conclude the trial of the case within eight months from the date of production of certified copy of this order strictly as per provision of section 309 Cr.P.C. on day-to-day basis without granting any unnecessary adjournment to either of the parties, if there is no legal impediment.

17. It will be open for the applicant to renew his prayer for bail if within stipulated period of eight months, trial of the case is not concluded by the trial court subject to the condition that applicant shall fully co-operate with the trial of the case.

18. 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 :- 9.11.2023

Ankita