

Neutral Citation No. - 2023:AHC:232706

Reserved On:- 30.11.2023

Delivered On:- 07.12.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45167 of 2023

Applicant :- Najar Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Indra Narayan

Counsel for Opposite Party :- G.A., Alkesh Singh

Hon'ble Siddharth, J.

1. Heard Sri Indra Narayan, learned counsel for the applicant; Sri Alkesh Singh, learned counsel for informant as well as the learned AGA for the State and perused the material placed on record.

2. The instant bail application has been filed on behalf of the applicant, **Najar Singh**, with a prayer to release him on bail in **Case Crime No. 221 of 2023 under Sections 323, 304 of IPC, Police Station- Kurra, District- Mainpuri**, during pendency of trial.

3. There is allegation against the applicant of causing the offence of beating and culpable homicide not amounting to murder. It is alleged that the applicant alongwith co-accused, Poonam Devi and Rakesh Kumar, took the brother of the informant to their house on 25.05.2023 and after making him consumed liquor, they beat him and dragged him in the field behind the house of the informant. On 26.05.2023, they again made him consumed liquor and he was again beaten and then informant came to know of the same. The deceased was taken to Safai hospital where he subsequently died.

4. Learned counsel for the applicant has submitted that it has come in the statement of independent witness that the deceased was habitual drinker. He used to quarrel with the people and also indulge in violence after consuming liquor. On the fateful night the applicant was sleeping on his cot after putting the mosquito net when at about 8-8:30 pm, the deceased came under the influence of liquor and turned the cot and mosquito net of the applicant. He got annoyed and beat him by a *danda* kept by him. Initially FIR was lodged only under Sections 342/323 IPC, but after the deceased died, implication under Section 304 was made. It has been submitted by learned counsel for applicant that there was no intention to cause the murder of the deceased. The applicant has been

falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 02.06.2023. The trial in the aforesaid case is not likely to be concluded in near future.

5. Learned A.G.A. and learned counsel for informant have vehemently opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre-trial stage, therefore, she does not deserves any indulgence. In case the applicant is released on bail, he will again indulge in similar activities and will misuse the liberty of bail.

6. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant, keeping in view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of ***Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022*** and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid 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 with the following conditions that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

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

8. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

9 The court below is directed to conclude the trial against the applicant, as expeditiously as possible, preferably within a period of one year.

10. **Registrar(Compliance) is directed to communicate this order to the concerned court below within ten days.**

Order Date :-07.12.2023

Abhishek