

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45613 of 2023

Applicant :- Habiraj

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

Counsel for Applicant :- Chandra Prakash Mishra,Rajiv Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot,J.

On 23.02.2023 this Court has passed the following order in Criminal Misc. Bail Application No.8671 of 2023 (Habiraj v. State of U.P. and 3 others):

"The trial court is directed to conclude the trial within a period of six months from the date of receipt of a certified copy of this order. The learned trial court shall proceed with the hearing on a day to day basis to ensure that the above stipulated timeline of six months is strictly adhered to. All witnesses and counsels are directed to cooperate with the trial proceedings.

The trial court has also to be conscious of the rights of the accused persons and is under obligation of law to ensure that all expeditious, necessary and coercive measures as per law are adopted to ensure the presence of witnesses. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

The learned trial court shall promptly take out all strict coercive measures against all the witnesses in accordance with law who fail to appear in the trial proceeding.

Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

Police and administrative authorities of the State are also directed to ensure that the coercive measures adopted by the court are promptly executed to ensure the presence of the witnesses on the appointed date before the trial court.

The trial judge shall submit a fortnightly report on the progress of trial and the steps taken to comply with this order to the learned District Judge.

A copy of this order be communicated to the learned trial judge through the learned District Judge, Basti by the Registrar (Compliance) by FAX."

By means of the second bail application the applicant has prayed to be enlarged on bail in Case Crime No.67 of 2020 at Police Station-Rudhauri, District-Basti under Sections 354A, 354B IPC and Section 9/10 of the POCSO Act. The applicant is in jail since 20.01.2023.

The first bail application of the applicant was rejected by this Court on 23.02.2023.

The following arguments made by Shri Ravi Dubey, learned counsel holding brief of Shri Rajiv Dwivedi, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Paritosh Kumar

Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:

1. The applicant is a law abiding citizen and had always cooperated with the investigations and joined the trial. The applicant never tampered with evidence nor did he influence any witness.
2. The trial has not concluded despite directions of this Court.
3. The trial is moving at a snail's pace and and shows no sign of early conclusion. The applicant cannot be faulted for the delay in the trial.
4. Inordinate delay in concluding trial has lead to an indefinite imprisonment of the applicant without being any evidence against the applicant. The right of the applicant to speedy trial has been violated.
5. 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.
6. The applicant does not have any criminal history apart from the instant case.
7. 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.

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-Habiraj 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.

Without prejudice to the rights of the accused, the Chairman, Child Welfare Committee, Basti shall ensure that the victim is provided psychological support and counseling and any other support system to which she is entitled.

Order Date :- 30.10.2023/Ashish Tripathi