

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46175 of 2023

Applicant :- Ajay Thakur

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

Counsel for Applicant :- Jitendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Heard learned counsel for the applicant and learned A.G.A.

The instant bail application has been filed on behalf of the applicant, Ajay Thakur, with a prayer to release him on bail in Case Crime No. 355 of 2019 (S.T. No. 478 of 2019), under Sections 363,376 IPC, section 3/4 POCSO Act and section 3(2)(5a) of SC/ST Act Police Station Majhola, District- Moradabad, during pendency of trial.

This is the second bail application. The first bail application was rejected vide order dated 10.2.2021 by the coordinate Bench of this Court , which is not available.

Learned counsel for the applicant has submitted that victim,her mother and father have been examined as P.W.1,P.W.2 and P.W.3 before the court below but they have not supported the prosecution case.Applicant alleges false implication.He is in jail since 26.5.2019 and has no criminal history.

Learned A.G.A. has opposed the bail prayer of the applicant but could not dispute the aforesaid facts.

Regarding long incarceration of under trials prisoners in jail due to delay in conclusion of trial, the Hon'ble Apex Court in re: ***Union of India vs. K.A. Najeer reported in AIR 2021 Supreme Court 712*** has held in Para 16 of the judgment being reproduced herein below as follows :-

"This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In

Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping 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 recent judgment dated 11.07.2022 of the Apex Court in the case of **Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021**; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed

Let the applicant 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.

3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

4. That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 to ensure presence of the applicant.

6. 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

The trial court is directed to conclude the trial within a period six months.

The registrar(Compliance)of this court is directed to communicate this order to the trial court for compliance within ten days.

Order Date :- 1.11.2023

Atul kr. sri.