

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47634 of 2023

Applicant :- Ramchander @ Chandraz And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Aqeel Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

1. Counter affidavit filed by learned A.G.A. and supplementary affidavit filed by learned counsel for the applicants are taken on record.
2. Heard learned counsel for the applicants and learned A.G.A for the State.
3. There is allegation against the applicants that they have caused culpable homicide amounting to murder of the husband of informant.
4. Counsel for the applicants submits that from the F.I.R., it is clear that the deceased and the applicants are labourers and they were employed for construction in the house of one Ram Charan Gupta. On 27.08.2023, a party took place at 10:00 pm at the place of work, where the applicants are alleged to have caused fatal injury to the deceased after consuming liquor, as a result of which he had died. Counsel for the applicants further submits that there is no other witness of the incident. The informant, who is wife of the deceased, was admittedly not present at the scene of incident. She reached at the scene of incident after hearing about the incident. Recovery of one wooden stick had been made on the pointing out of both the applicants, which is not relevant in accordance with the section 27 of Evidence Act. He has further submitted that the person in whose house the construction was being made, Ram Charan Gupta, has not been made the witness in the charge-sheet submitted by the Investigating Officer, nor his statement was recorded by the Investigating Officer. He was the best person to testify the manner of the incident. The applicants have been falsely implicated only to work out the case. They are in jail since 04.09.2023 and have no criminal history to their credits.

5. On the other hand learned A.G.A has opposed the prayer for bail, but he could not dispute the submissions urged by learned counsel for the applicants.

6. 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; applicants 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., 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 applicants have made out a case for bail. The bail application is allowed.

7. Let the **applicants- Ramchander @ Chandraz and Ashok Kumar**, involved in Case Crime No.375 of 2023, under Section-304 IPC, Police Station- Phoolpur, District- Azamgarh, be released on bail on their 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.

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

(ii) The applicants shall file an undertaking to the effect that they 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 applicants shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of their absence, without sufficient cause, the Trial Court may proceed against them under Section 229-A of the Indian Penal Code.

(iv) In case the applicants misuse the liberty of bail during trial and in order to secure their 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 them in accordance with law under Section 174-A of the Indian Penal Code.

(v) The applicants 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 applicants are 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 them in accordance with law.

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

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

10. Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of one year.

11. Registrar (compliance) is directed to communicate this order to the trial Court for necessary compliance within ten days.

Order Date :- 6.12.2023

Saif