Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48078 of 2023

Applicant :- Chhota
Opposite Party :- State of U.P.
Counsel for Applicant :- Arvind Kumar
Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

List has been revised.

Heard learned counsel for the applicant as well as the learned AGA for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant, **Chhota,** with a prayer to release him on bail in **S.T. No.114 of 2020, Case Crime No.143 of 2019, under Sections 498-A, 304-B IPC and 3/4 D.P. Act, Police Station Bisanda, District- Banda,** during pendency of trial.

This is second bail application of the applicant. First bail application of the applicant was rejected by this Court for want of prosecution.

Learned counsel for the applicant has submitted that before the trial court, five prosecution witnesses out of 11 have been examined. The applicant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 13.10.2019. The trial in the aforesaid case is not likely to be concluded in near future.

Per contra learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he 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.

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. Najeeb 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."

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 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; 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.

In case, of breach of any of the above conditions, it shall be a ground

for cancellation of bail.

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

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

The Registrar (Compliance) of this Court is directed to communicate this order to the court concerned within 10 days.

Order Date :- 8.11.2023
Ruchi Agrahari

Digitally signed by :-
RUCHI AGRAHARI
High Court of Judicature at Allahabad