

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48978 of 2023

Applicant :- Brijesh Nishad

Opposite Party :- State of U.P.

Counsel for Applicant :- R.K. Shahi, Shweta Kumari

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

Heard Shri R.K. Shahi, learned counsel for the applicant and learned A.G.A.

The instant bail application has been filed on behalf of the applicant, Brijesh Nishad, with a prayer to release him on bail in Case Crime No. 104 of 2023, under Sections 302, 307, 323, 504, 506 IPC Police Station Surauli, District- Deoria, during pendency of trial.

Co-accused, Jokhan has been granted bail by this Bench vide order dated 4.10.2023 in Criminal Misc. Bail Application No. 42400 of 2023 by the following order:-

"1. Heard Sri R.K. Shahi, learned counsel for the applicant and learned A.G.A for the State.

2. There is allegation in the FIR that on 23.04.2023 at about 10:00 p.m nephew of the informant, namely, Ranjan Tiwari, aged about 27 years had gone out and entered into dispute with co-accused, Brijesh Nishad son of Suresh Nishad. When the dispute was taking place his co-villager, Indrapal, saw the same and informed the informant. On coming to know of the same, the informant along with his nephew, Amit Tiwari, fellow villagers, Sanjeet Yadav and Indrapal went to the alleged place of incident where his nephew, Ranjan Tiwari, was not found. Thereafter he went to the house of co-accused, Brijesh Nishad, where he found co-accused, Brijesh Nishad, his father, Suresh Nishad and the applicant abusing his nephew and causing him serious injuries by lathi-danda on his head, chest and stomach. His nephew

had fallen and blood was oozing from his nose, mouth and passage of urine. When they asked the accused persons why they are beating, Amit Tiwari, the accused informed that he teases their sister and hence they will kill him. They took Amit Tiwari to the Sadar Hospital, Deoria and from there to Medical College, Gorakhpur and later he died.

3. Counsel for the applicant submits that the prosecution case is overwhelmed with material contradiction, omissions and improvements which undoubtedly affects, erodes and loose creditability of the case, even then the court below without applying its judicial mind has rejected the bail application preferred by the applicant which is wholly illegal and unsustainable in the eye of law. Further, learned court below has not examined malafide intention, motive and possibility of false implication of the applicant in proper perspective. As per prosecution three persons have assaulted the deceased while the post-mortem report clearly reveals that there are only two injuries of which one on head may be treated to be fatal to some extent, though it is also not so grievous in nature. Who is author of the aforesaid injury is not clear. In these circumstances false implication of the accused persons, specifically of the applicant, who belongs to different village could not be ruled out.

4. Counsel for the applicant also submits that as per prosecution the alleged incident has taken place in the night in the village, while there is no whispering about source of light in order to visualize the incident for observing overt acts of the accused persons. The deceased has died on the fourth day of incident but neither the prosecution has put forward any injury report or the health condition report of the intervening period. Non recording of statement of the deceased for four days casts cloud on the entire prosecution story. Obviously, the entire allegations levelled against the applicant are false and concocted one. No incriminating material has been recovered either from possession or from pointing out of the applicant. The applicant is in jail since 25.04.2023 and has no criminal history to his credit.

5. On the other hand learned A.G.A has opposed the prayer for bail.

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; 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., 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.

7. Let the applicant, Jokhan, involved in Case Crime No. 104 of 2023, under Sections- 302, 307, 323, 504, 506 IPC, Police Station- Surauli, District- Deoria, 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.

(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 misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails 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.

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. "

Thereafter bail application no. 43266 of 2023, Suresh Nishad has been rejected by the coordinate Bench(Hon'ble Ajay Bhanot, J.) of this court vide order dated 6.11.2023 by the following order:-

"By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 104 of 2023 at Police Station Surauli, District Deoria under Sections 302, 307, 323, 504, 506 I.P.C. The applicant is in jail since 25.04.2023.

The bail application of the applicant was rejected by learned trial court on 22.08.2023.

The applicant has been identified as the principal offender who inflicted the fatal injuries to the deceased. The motive for committing the crime has also been recorded in the prosecution case.

Postmortem report as well as medical report corroborates commission of offence. The offence is grave. There is likelihood that the applicant had committed the offence. At this stage, no case for bail is made out.

Without going into the merits of the case, the bail application is dismissed. Considering the gravity of the offence, interest of justice will be served by directing the learned trial court to expedite the trial within a stipulated period of time.

The trial court is directed to conclude the trial within a period of one year 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 one year 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 issue summons by regular process as per Section 62 Cr.P.C. and also by registered post as contemplated under Section 69 Cr.P.C. to expedite the trial.

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.

The police authorities shall ensure that warrants or

any coercive measures as per law taken out by the learned trial court to ensure that the attendance of the witnesses are promptly executed.

The Superintendent of Police, Deoria shall file an affidavit before the trial court on the date fixed regarding status of execution of the warrants/service of summons taken out by the learned trial court.

In case there is a failure on part of the police authorities to execute the warrants or other coercive measures, the Superintendent of Police, Deoria shall state the reasons for the same in the said affidavit and also show the steps taken to execute the warrants. The Superintendent of Police, Deoria shall simultaneously inform the Additional Director General of Police (ADG) Gorakhpur Zone, about the aforesaid failure of the police authorities in the first instance to execute the warrants and coercive measures issued by the learned trial court. If required, the Additional Director General of Police (ADG) Gorakhpur Zone, may issue appropriate directions to ensure that the warrants issued are promptly executed by the learned trial court.

The delay in execution of warrants and consequent absence of witnesses is one of the principal causes of delays in criminal trials and has to be addressed effectively by all stakeholders.

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, Deoria by the Registrar (Compliance) by FAX."

When the matter came before another coordinate Bench. The following order dated 8.12.2023 was passed by the coordinate Bench:-

"Heard Mr. RK. Shahi, the learned counsel for applicant-Brijesh Nishad and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Brijesh Nishad seeking enlargement on bail in Case Crime No.104 of 2023, under Sections 302, 307, 323, 504, 506 IPC, police station Surauli, district Deoria, during the pendency of trial.

At the very outset, the learned counsel for applicant submits bail applications of co-accused have been decided by different Benches, the details of which are as under :

Criminal Misc. Bail Application No.42400 of 2023 (Jokhan Vs. State of U.P.) was decided vide order dated 04.10.2023 passed by His Lordship Hon'ble Siddharth, J. and Criminal Misc. Bail Application No.43266 of 2023 (Suresh Nishad Vs. State of U.P.) decided vide order dated 06.11.2023 passed by His Lordship Hon'ble Ajay Bhanot, J.

In view of the law laid down by Apex Court in Pradhani Jani Vs. State of Odisha dated 15.05.2023 passed in Criminal Appeal No. 1503 of 2023 (Arising out of SLP (Crl.) No. 3241 of 2023) and Sajid Vs. State of U.P. dated 31.07.2023 passed in Special Leave to Appeal (Crl.) No. 7203 of 2023 and the facts noted above, it is desirable that present application for bail by co-accused be heard by either of the Hon'ble Judges who have decided aforementioned bail applications of co-accused.

Let the matter be placed before Hon'ble the Acting Chief Justice for nominating this application for bail before appropriate Bench.

Accordingly, matter shall re-appear before appropriate Bench, if possible, on 15.12.2023, as fresh."

Thereafter matter was nominated to this Bench by Hon'ble The Acting Chief Justice vide order dated 12.12.2023. Hence this court proceeded to hear the matter.

The case of the applicant is at par with co-accused,

Jokhan, who has been granted bail by the reasoned order by the order quoted above. Entire case has been considered and finding has been recorded by this court in the case of co-accused, Jokhan. This court is bound by its own order. Case of the applicant appears to be similar to that of co-accused, Jokhan. The applicant is in jail since 25.4.2023 and has no criminal history.

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

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.

Order Date :- 15.12.2023

Atul kr. sri.