

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49744 of 2023

Applicant :- Krishn @ Omkar

Opposite Party :- State of U.P.

Counsel for Applicant :- Akash Tomar

Counsel for Opposite Party :- G.A.,Anand Kumar,R.P. Mishra

Hon'ble Siddharth,J.

Heard learned counsel for the applicant and learned A.G.A. for the State and perused the material on record.

By means of this application, the applicant, Krishn @ Omkar, who is involved in Case Crime No. 296 of 2022, under Sections- 147, 148, 149, 302, 504 and 506 IPC, Police Station- Kanker Khera, District- Meerut and is in jail since 17.10.2023, is seeking enlargement on bail during the trial.

It is submitted by learned counsel for the applicant that similarly placed co-accused, Shibhu @ Shiv Kumar, has already been enlarged on bail by this Court by the order of date passed in Criminal Misc. Bail Application No. 48104 of 2023.

The order dated 07.12.2023 is quoted hereinbelow :-

"Heard Sri Vivek Kumar Singh, Advocate assisted by Sri Akash Tomar, learned counsel for the applicant; Sri H.N. Pandey, learned counsel for the informant and learned A.G.A for the State.

Rejoinder affidavit filed by counsel for the applicant is taken on record.

Vakalatnama filed by Sri H.N. Singh, Advocate on behalf of informant is taken on record.

Learned counsel for the applicant submits that initially the applicant was implicated in the FIR but he was not charge sheeted. During the trial he has been summoned for facing trial as per order passed under Section 319 Cr.P.C. The charge sheeted accused have already been enlarged on bail and their bail orders have been brought on record as Annexure 16 to the bail application. He has further submitted that the order passed under Section 319 Cr.P.C against the applicant is under challenge in Criminal Revision No. 3526 of 2023 but on account of non-cooperation of counsel for the informant, the same is not being decided. In the meantime, this bail application has been

moved since he is languishing in jail since 17.10.2023. The applicant has criminal history of 5 cases explained in paragraph 3 of the supplementary affidavit as follows :-

(i) Case Crime No. 614 of 2020, under Sections 188, 269, 270 IPC, P.S. Kankerkhera, District- Meerut. (released on notice u/s 41A Cr.P.C and trial pending).

(ii) Case Crime No. 912 of 2015, under Section 305 IPC, P.S. Kankerkhera, District- Meerut. (final report).

(iii) Case Crime No. 84 of 2019, under Sections- 147, 323, 325, 342, 452 IPC and Section 3(1)(Da) SC/ST Act, P.S. Railway Road, District- Meerut. (Bail out).

(iv) Case Crime No. 296 of 2022, under Sections- 147, 148, 149, 302, 504 and 506 IPC, P.S. Kankerkhera, District- Meerut. (present case).

(v) Case Crime No. 615 of 2020, under Section- 147, 452, 427, 436 and 506 IPC, P.S. Kankerkhera, District- Meerut. (final report).

On the other hand learned A.G.A has opposed the prayer for 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 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, Shibhu @ Shiv Kumar, involved in Case Crime No. 296 of 2022, under Sections- 147, 148, 149, 302, 504 and 506 IPC, Police Station- Kanker Khera, District- Meerut, 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.

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."

He has further submitted that since the role of the applicant is identical to that of co-accused, Shibhu @ Shiv Kumar, who has already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity and for the reasons given in the order of co-accused.

The prayer for bail has vehemently been opposed by learned A.G.A.

Considering the submissions made by learned counsel for the applicant as well as learned A.G.A., this Court is of the view that the applicant has made out a case for grant of bail on the ground of parity.

In view of the above, let the applicant be released on bail on his executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the court concerned with the following conditions :-

(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.

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.

Order Date :- 7.12.2023

Rohit