

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50098 of 2023

Applicant :- Majid And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Daya Shanker Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

1. Heard learned counsel for the applicants and learned A.G.A for the State.

2. There are allegations against the applicants of committing the offences of hiding the evidence, murder and assault with common intention.

3. Counsel for the applicants submits that all the accused in this case were assigned general role. Co-accused Himanshu and Smt. Heena have been enlarged on bail by the co-ordinate Bench of this Court vide orders dated 26.09.2023 and 04.10.2023 passed in Criminal Misc. Bail Application Nos. 41673 of 2023 and 42171 of 2023, respectively. The bail orders have been brought on record as Annexure-7 to the affidavit filed in support of this bail application. The applicants have been assigned similar role as of the above co-accused, who have been granted bail. Hence, the applicants are also entitled to be enlarged on bail on the ground of parity. The applicants are in jail since 21.06.2023 and have no criminal history to their credit.

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

5. 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.

6. Let the **applicants- Majid and Naushad @ Muntiyaz**, involved in Case Crime No. 226 of 2023, under Sections- 147, 302, 201, 323, 34 IPC, Police Station- Crossing Republic, District- Ghaziabad, 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 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 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 applicants 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 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 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 them in accordance with law.

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

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

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

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

Order Date :- 7.12.2023

Saif