

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51952 of 2023

Applicant :- Lalu Alias Lalit

Opposite Party :- State of U.P.

Counsel for Applicant :- M.P.S. Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Heard Sri M.P.S. Chauhan, 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, Lalu Alias Lalit, with a prayer to release him on bail in **Case Crime No. 72 of 2023, under Sections 302, 394, 411, 34 IPC, Police Station- Pisawa, District-Aligarh**, during pendency of trial.

Learned counsel for applicant has submitted that co-accused, Gaurav, has already been granted bail by this Court vide bail application No. 46502 of 2023 which is quoted hereinbelow:-

" Heard learned counsel for the parties.

The instant bail application has been filed on behalf of the applicant, Gaurav, with a prayer to release him on bail in Case Crime No. 72 of 2023, under Sections 302,394,411,34 IPC Police Station Pisawa, District- Aligarh, during pendency of trial.

There is allegation against the unknown accused regarding commission of murder of one person in the First Information Report..Learned counsel for the applicant has submitted that no one was named the First Information Report. Subsequently statement of Smt.Bala Devi @ Ballo, was recorded who is stated to be Mausi of the informant. She stated tat when she returned, she saw that applicant was standing at the gate of the house and after seeing her he ran away and when she entered into the house she saw that co-accused,Lalit @ Lalu was in possession of Banka and deceased was found lying in pool of blood. It is a case of circumstantial evidence.Applicant has not found in possession of any weapon.He is in jail since 26.5.2023. Subsequently applicant was implicated in the case under the Gangsters Act.

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

*Learned counsel for the applicant has submitted that while granting bail to the aforesaid co-accused the role of applicant was found to be in possession of *banka* as seen by the eye witness. He has pointed out that recovery of one knife has been allegedly made*

from the applicant and not the *banka* which was seen by the witness in the hand of the applicant at the time of alleged offence. There is allegation that the applicant was found in possession of two earrings, but in the FIR there was no such allegation. Learned counsel for applicant has submitted that the applicant has been implicated in another case regarding the loot of the earrings recovered from him. He has been falsely implicated in this case. The applicant is languishing in jail since 26.05.2023. 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 deserve any indulgence. In case the applicant is released on bail, she will again indulge in similar activities and will misuse the liberty of 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 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. & 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.

Order Date :- 12.12.2023

Abhishek