

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1997 of 2023

Applicant :- Rama Kant Shukla

Opposite Party :- State Of U.P. Thru. Secy. Home Dept. Lko.

Counsel for Applicant :- Ajit Shukla, Atul Verma, Manoj Kumar Mishra, Neha Singh, Vinod Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Atul Verma, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
2. This is the third bail application moved by the applicant as his earlier two bail applications has been rejected by Coordinate Benches of this Court vide orders dated 15.02.2017, 06.09.2018 passed in Bail Nos. 8485/2016 and 5313/2017 respectively.
3. This bail application has been moved by the accused/applicant- **Rama Kant Shukla** for grant of bail, in Case Crime No.74/2016, under Sections 302, 201 I.P.C. & 3/25 Arms Act, Police Station- Chinhat, District- Lucknow, during trial.
4. Learned counsel for the accused-applicant vehemently submits that applicant is detained in prison in this case since 2016 and till now, only five prosecution witnesses have been testified and having regard to the pace with which the case is traveling before the trial Court, the trial is not expected to conclude in near future.
5. It is further submitted that the dead body of the deceased was found in the vicinity of Police Station- Chinhat, Lucknow information pertaining to which was given by one Jagdish, however, the same was identified as Sadashiv @ Sunil and as in the post mortem report, firearm injury and multiple incise wounds have been found and the cause of death has been shown as, due to ante mortem firearm injuries, the case was converted into Section 302 I.P.C.
6. During the course of investigation, the complicity of the co-accused Akash Ojha @ Anshoo and of the applicant has surfaced and in the confessional statements of the applicant and

co-accused, contradictory story has surfaced while co-accused Akash Ojha @ Anshoo in his confessional statement confessed to have caused the death of the deceased by firing towards him with a country made pistol and also stated to have handed over the pistol to the instant applicant; while applicant Rama Kant Shukla in his confessional statement has stated to have caused the death of the deceased with the help of co-accused Akash Ojha @ Anshoo.

7. It is vehemently submitted that in the confessional statement of the applicant, it has not been specifically mentioned that he has caused the death of the deceased by firing on him, though, a country made pistol is shown to have been recovered on his pointing but the same is not significant, having regard to the confessional statement of the co-accused Akash Ojha @ Anshoo to the tune that it was he (Akash Ojha @ Anshoo) who has fired on the deceased and thus, the recovery of *tamancha* so far as the applicant is concerned is immaterial, more so, when a specific averment has been made by the co-accused Akash Ojha @ Anshoo in his confessional statement that after firing on the deceased, he has handed over the country made pistol to the applicant.

8. It is also submitted that apart from the confessional statement of the applicant, the statement of two more witnesses, namely, Dinesh and Jitendra, were placed against the applicant. While Dinesh had stated to have seen the crime being committed in the car, however, he did not identify the applicant and claimed to have identified the co-accused Akash Ojha @ Anshoo and the other witness, Jitendra is a witness of extra judicial confession with regard to the applicant as it is stated that the applicant had allegedly confessed his guilt before him.

9. It is vehemently submitted that both these witnesses have been testified before the trial Court as P.W.2 and 4 and they have been declared hostile as they have not reiterated the statement given by them in their statement recorded under Section 161 Cr.P.C. and they have also disowned their statements recorded by the investigating officer under Section 161 Cr.P.C.

10. It is also submitted that apart from the fact that witness Jitendra has become hostile, it also could not be believed that the applicant would make confessional statement before a stranger, who is not at all in a position to help him, and thus, the witness Jitendra appears to be a planted witness.

11. It is also submitted that a car wherein the offence is shown to have been committed has also been recovered on the pointing

of co-accused Akash Ojha @ Anshoo and he (Akash Ojha @ Anshoo) and he has been released on bail by a coordinate Bench of this Court vide order dated 08.08.2016 passed in Bail No.6255 of 2016. The applicant is in jail in this case since 2016 and is not having any criminal history and thus, he is entitled to be released on bail as the period of incarceration of 7 years coupled with the fact that the co-accused Akash Ojha @ Anshoo has been granted bail amounts to substantial change in the circumstances since the rejection of his earlier bail applications. Charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

12. Learned A.G.A., on the other hand, opposes the prayer of bail of the applicant on the ground that earlier two bail applications of the applicant has been rejected on merits and there is no new ground available to the applicant and thus, he is not entitled to be released on bail.

13. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted case that the deceased was the brother-in-law (sala) of the co-accused Akash Ojha @ Anshoo. It has also come in the evidence that Akash Ojha @ Anshoo and the applicant had left the house together with the deceased. One witness Dinesh had claimed to have seen the commission of the offence as according to him, he heard the sound of fire and also sound of breaking of glass of the vehicle, however, he could only identify the co-accused Akash Ojha @ Anshoo. The other witness Jitendra who has claimed that the applicant had made a confession in front of him is stated to be a resident of Lucknow while the applicant is a resident of Hardoi and it is submitted in this regard that making of confessional statement before a stranger could not be believed, more so, when he (witness Jitendra) is not in a position to help the applicant. Both these witnesses, namely, Dinesh and Jitendra have been declared hostile when they appeared before the trial Court as prosecution witnesses and they have chosen not to support the version of the prosecution. Admittedly, the beneficiary of the death of the deceased may only be the co-accused Akash Ojha @ Anshoo who has already been granted bail. The applicant is not having any criminal history and he is detained in prison in this case since 26.02.2016. Only five prosecution witnesses have been testified so far. All facts mentioned hereinabove including the number of witnesses produced before the trial court vis-a-vis the period of detention of the applicant i.e. 7 years, in the considered opinion of this Court amounts to substantial change in the circumstances since the rejection of the earlier bail applications

of the applicant and when the applicant is also not having any criminal antecedent, in the considered opinion of this Court, the facility of bail may safely be extended to the applicant subject to certain restrictions/conditions. The presence of the applicant could be secured before the trial court by placing adequate conditions.

14. Having regard to the overall facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

15. Let the accused/applicant- **Rama Kant Shukla** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

17. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

18. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

Order Date :- 17.10.2023

Gurpreet Singh