

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5677 of 2023

Applicant :- Chhangur

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

Counsel for Applicant :- Alok Kr. Misra

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Alok Kumar Misra, learned counsel for the applicant, Shri Onkar Nath Pandey, learned brief holder appearing on behalf of learned AGA and perused the record.
2. This is the second bail application. The first bail application was rejected by coordinate bench of this Court on 12.09.2022 with a direction to the trial court to conclude the trial within a period of six months. However, more than a year has passed from rejection of bail order but trial has not been concluded. Now, the two fact witnesses have been examined who have turned hostile. Thus, new cause of action as arisen.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.26 of 2021, under Sections -302, 201 IPC., Police Station- Kauriya, District Gonda.
4. It is contended by learned counsel for the applicant that the PW1 is Chowkidar of the village and complainant of the present case has not supported the prosecution case. In his cross examination, he deposed before the trial court that he had not lodged any report and no pressure has been put on him and he is giving statement out of his free will. Learned counsel submitted that the family members namely PW2 Sajroon @ Nanki, who is mother in law of the deceased has been declared hostile. PW3 Saba Bano, who is daughter of sister of deceased has also turned hostile. Learned counsel has invited attention of this Court towards the statement of PW4 Lalu and PW5 Khunkhun Khan they have also been declared hostile. Learned counsel submitted that the fact witnesses are not supporting the prosecution case and have become hostile, therefore, the applicant is entitled to be released on bail. Learned counsel further submitted that applicant has no criminal history which has been mentioned in para 2 of supplementary affidavit dated 25.04.2023. The applicant is languishing in jail since 10.02.2021.

5. Learned AGA for the State opposed the prayer for bail but could not dispute the aforesaid submission made by learned counsel for the applicant that fact witnesses from PW1 to PW5 have been declared hostile.

6. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and looking to the fact that the fact witnesses from PW1 to PW5 have been declared hostile, therefore, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, **Chhangur** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) 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.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) 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.

(iv) 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. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 16.10.2023

Pks