

Court No. - 12

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7038 of 2023

Applicant :- Sahnawaj Bihari @ Sahnawaz Anzar

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

Counsel for Applicant :- Ashok Kumar Singh, Annapurna Singh

Counsel for Opposite Party :- G.A., Gulam Mustafa

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State as well as learned counsel for the complainant.

2. This is third bail application filed by the applicant in F.I.R. No. 188 of 2020, under Sections 147, 148, 149, 302, 34, 120B IPC and Section 7 of Criminal Law Amendment Act, Police Station Kotwali Gangaghat, District Unnao with the prayer to enlarge him on bail.

3. Learned counsel for the applicant submits that the applicant has falsely been implicated in the present case. It is further submitted that first bail application was rejected vide order dated 8th October, 2021 with the direction to the trial court to conclude the trial within one year without granting any unnecessary adjournment to either of the parties. However, since the trial was not concluded within the aforesaid period, another bail application was filed, which was rejected by this Court vide order dated 02.12.2022 with the direction to the trial court to conclude the trial within one year from the date of the order. It is also submitted that other co-accused person, namely, Vikas Dixit, having identical role, have already been granted bail. It is next submitted that all the witnesses have already been examined before the trial court and there is no possibility of tampering of any evidence. It is lastly submitted that the applicant has falsely been implicated in six other cases, in one of which, i.e., F.I.R. No. 445 of 2019, under Sections 147, 384, 323, 504, 506 I.P.C., P.S. Ganga Ghat, District Unnao, the involvement of the

applicant was not found. It is submitted that in near future, there is no possibility of conclusion of trial and the applicant, who is in jail since 23.06.2020, is entitled for bail. It is also submitted that the applicant will never misuse the liberty of bail and shall fully cooperate in the trial.

4. Learned A.G.A. as well as learned counsel for the complainant opposes the prayer for grant of bail to the applicant, but they do not dispute the fact that while rejecting the earlier bail application vide order dated 08.10.2021, this Court directed the court below to conclude the trial within one year. Thereafter, the second bail application was also rejected vide order dated 02.12.2022 with the direction to the trial court to conclude the trial within one year, , but the same has not been concluded till date. They also do not dispute that all the witnesses have already been examined and there is no possibility of tampering of any evidence.

5. Considering the arguments advanced by the learned counsel for the applicant, learned A.G.A., learned counsel for the complainant and going through the contents of F.I.R., earlier orders rejecting the bail applications as well as other relevant documents, it is undisputed that the first bail application moved by the applicant was rejected vide order dated 08.10.2021 with the direction to the trial court to conclude the trial within one year. Thereafter, while rejecting the second bail application vide order dated 02.12.2022, this Court directed the trial court to conclude the same within one year from the date of the said order, but the same has not been concluded till date. It is also evident that at this stage, all the witnesses have been examined and there is no possibility of tampering of any evidence. In such circumstances, I am of the view that the applicant is entitled to be released on bail.

6. Application stands allowed.

7. Let applicant -Sahnawaj Bihari @ Sahnawaz Anzar be

released on bail in F.I.R. No. 188 of 2020, on his furnishing personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(ii) 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 office or tamper with the evidence.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) 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 IPC.

(v) 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. may be issued and if 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 IPC.

(vi) The applicant shall remain present, in person, before the trial court on dates fixed for (a) opening of the case, (b) framing of charge; and (c) 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. Any violation of above conditions will be treated misuse of bail and learned Court below will be at liberty to pass appropriate order in the matter regarding cancellation of bail.

Order Date :- 16.11.2023

VKS