

Court No. - 9

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8040 of 2023

Applicant :- Basudeo

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

Counsel for Applicant :- Raghvendra Singh, Dharmendra Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajan Roy, J.

Heard learned counsel for the applicant and learned A.G.A.

This is the third bail application under Section 439 Cr.P.C. for enlargement of the applicant on bail who is languishing in jail since 12.04.2019 in connection with case Crime No. 100 of 2019, under Sections 147, 149, 302, 323, 307, 34, 120B IPC, Police Station Mawai, District Ayodhya/Faizabad.

While rejecting the first bail application on 29.05.2020 the trial was ordered to be expedited and be completed as early as possible, say, within one year. Thereafter while rejecting the second bail application on 21.09.2021 examination of PW-1 and other witnesses of facts were ordered to be expedited and trial to be concluded at the earliest. It was further observed that if in spite of cooperation of the applicant witness of facts are not examined within eight months of service of certified copy of the said order in the Trial Court, it shall be open for the applicant to move a fresh bail application.

As per the report of the Additional District and Sessions Judge, Court No. 1, Faizabad to this Court the alleged eye-witness PW-1 Raju Singh the brother of the deceased has been examined and thereafter PW-2, Brij Raj Singh, the father in law of the deceased and PW-3, Sarvesh Kumar Singh, the father of the deceased have been examined. The testimony of PW-1 is on record. The statement of PW-6, Sub Inspector and PW-7 had already been recorded earlier and PW-4, Dr. R.C. Gupta has been examined in chief on 23.06.2023 and his cross-examination was to be done.

In view of the above, the contention of the applicant's counsel is that the applicant has remained in jail for four and half years. The eye-witness and other material witnesses of facts i.e. father and father-in-law have already been examined. In total there are 33 witnesses and the trial will not be completed in the near future. The applicant cannot be kept in custody indefinitely.

As regards the criminal history, the contention is that the applicant has four criminal cases against him. One is under

Gangsters Act is an offshoot to this case and has been lodged based thereon. Other cases are under Section 323, 504 IPC one is under Section 3/25 Arms Act and there is another case under Section 392 IPC. The criminal case under Section 392 IPC was lodged while the applicant was in jail merely on the alleged confessional statement of co-accused of the said case. The applicant is on bail in all the aforesaid cases. It is also his submission that the other three accused who were named in the FIR have already been ordered to be enlarged on bail and their bail orders are on record. General role has been assigned to all the accused including the applicant.

Learned AGA has opposed the bail application based on the criminal history of the applicant and the possibility of another crime being committed by him.

Having heard learned counsel for the parties and having perused the record, as the trial has not been concluded in spite of lapse of sufficient time and considering the fact that the eye-witness PW-1 has already been examined so have PW-2 and PW-2 and three other witnesses, the trial is not going to be completed very soon as there are 33 witnesses in all, the criminal history of the applicant has been satisfactorily explained, other co-accused have been granted bail, this Court is of the opinion that the applicant is also entitled to be enlarged on bail.

The application for bail is ***allowed***.

Let applicant - ***Basudeo*** 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.

(v) In case, the applicant threatens or tries to influence the witnesses, then the prosecution will be at liberty to move application for cancellation of this bail.

(vi) The application shall submit copy of his passport, Aadhar Card, PAN card after release before the Trial Court on the next date.

(vii) The applicant shall report to the nearest police in the third week of every month and if not possible in the said week, he shall positively report by the last date of the month failing which it shall be a ground for seeking cancellation of his bail.

It is made clear that the observations made in this order are only for 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 before it, unaffected by anything in this order.

[Rajan Roy, J.]

Order Date :- 13.10.2023

Santosh/-