

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8268 of 2023

Applicant :- Adil Khan

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

Counsel for Applicant :- Praveen Tripathi, Shakti Krishna Chaube

Counsel for Opposite Party :- G.A., Ramakar Shukla

Hon'ble Mohd. Faiz Alam Khan, J.

1. Rejoinder affidavit filed by learned counsel for the applicant is taken on record.

2. Heard Shri Praveen Tripathi, learned counsel for the accused-applicant, learned counsel appearing for the complainant/informant as well as learned A.G.A. for the State and perused the record.

3. This second bail application has been moved by the accused/applicant- **Adil Khan** for grant of bail, in Case Crime No. 34 of 2020, under Section 302 I.P.C., Police Station Dhammaur, District Sultanpur, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first bail application of the applicant was rejected on 29.04.2022 and while rejecting the bail application of the applicant, a simultaneous direction was given to the trial Court to proceed with the trial expeditiously and the same be disposed of preferably within a period of one year. Much emphasis has been given by learned counsel for the applicant that despite cooperation of the applicant, who is detained in prison, the trial could not be completed by the trial Court within the time stipulated by the co-ordinate Bench of this Court.

5. It is further submitted that the prosecution is adopting delaying tactics as many witnesses who were cited in the charge sheet have been discharged and some new set of witnesses have been introduced and having regard to the delaying tactics adopted by the prosecution witnesses, the trial is not expected to conclude in near future.

6. It is next submitted that applicant is languishing in jail in this case since 24.02.2020 and he is not having any criminal history

and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

7. Learned A.G.A. on the other hand submits that there is no change in the circumstances since the rejection of the first bail application of the applicant and having regard to the fact that specific role of 'firing' towards the deceased has been assigned to the instant applicant and the firearm injuries have been found on the person of the deceased, the applicant is not entitled to be released on bail.

8. Learned counsel appearing for the complainant/informant vehemently opposes the prayer of bail of the applicant on the ground that the informant is cooperating in the expeditious disposal of the case and they have not taken any adjournment for that purpose and it is the prerogative of the prosecution to produce the witnesses of its choice and the same could not be controlled by the accused persons. It is also submitted that there is no change in the circumstances since the rejection of the first bail application of the applicant.

9. Having heard learned counsel for the parties and having perused the record, the foundation of moving this second bail application before this Court appears to be that a direction was given by a co-ordinate Bench at the time of rejecting the first bail application of the applicant to conclude the trial within one year, however, a copy of that order was not forwarded by this Court to the trial Court and nothing has been brought on record, which may suggest that the order of the co-ordinate Bench dated 29.04.2022 was placed before the trial Court by any of the party present before this Court.

10. Thus, it may not be presumed that direction of this Court to conclude the trial within one year from 29.04.2022 (the date on which the first bail application of the applicant was rejected) was communicated to the trial Court and as such there was *prima facie* no obligation on the trial Court to conclude the trial within stipulated period.

11. Coming to the merits of this case, there cannot be two views with regard to the factual matrix. The role of 'firing' with firearm has been assigned to the instant applicant and injuries which may be attributed to the firearm has been found on the person of the deceased and the death of the deceased is shown to have been caused by 'haemorrhage and shock' as a result of 'firearm injury'. Though, it is reflected that some of the prosecution witnesses presented before the trial Court have not supported the case of the prosecution but the same by itself may

not be a ground to enlarge the applicant on bail in presence of specific allegations against him.

12. Thus, for the reasons mentioned herein-before, I do not find any good ground to release the applicant on bail since the rejection of his first bail application. In result, this second bail application is also ***rejected***.

13. The trial Court is, however, directed to fix/list this case before it at least once in fortnight i.e. 15 days on regular basis and shall use all possible/legal means to procure the attendance of the prosecution witnesses and also not to adjourn the case without there being any substantial/justifiable reason.

14. The trial Court shall also make all out endeavours to record the evidence of all the witnesses of fact within a period of five months from production of a certified/authenticated copy of this order before it. If the trial is not concluded within five months or all the witnesses including defence witnesses are not examined before the trial Court during this period, whichever is earlier, the applicant may renew his prayer for bail before this Court again.

15. The S.S.P./S.P., Sultanpur shall be personally responsible for production of the prosecution witnesses before the trial Court on each and every date of such listing and there should not be any lapse in production of the prosecution witnesses before the trial Court.

16. The office is directed to immediately transmit a copy of this order to the trial Court through the Sessions Judge concerned as well as to the learned A.G.A. for being forwarded to the S.S.P./S.P., Sultanpur, for strict compliance.

Order Date :- 30.11.2023

Praveen