

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8309 of 2023

Applicant :- Saheb Lal Verma

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

Counsel for Applicant :- Amrit Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Amrit Kumar Tiwari, learned counsel for the applicant, Shri Rajnish Kumar Verma, learned AGA for the State and perused the record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.265 of 2020, under Sections 304 I.P.C. Police Station Tikainagar, District Barabanki.

3. This is the second bail application. The first bail application was rejected by coordinate bench of this Court on 10.10.2022 with a direction to conclude the trial within six months, but more than a year has passed, trial has not been concluded therefore, new cause of action has arisen.

4. Learned counsel for the applicant submitted that PW1 brother of the deceased has been declared hostile by the court below. He is the complainant and in his cross examination before the trial court, he has not supported the prosecution case. He deposed that no dowry was ever demanded by in-laws of the deceased and relation between the deceased and her in-laws were cordial. He further deposed that whatever injury was received by the deceased, while she fell on the hand pump (Nal). He deposed that on the behest of other family members, he lodged the FIR against the applicant and whatever proceeding was done by the police, the same was done without taking his statement and deceased died out her own fate. Learned counsel submitted that PW4 Sapna has also not supported the prosecution case. The other witnesses are formal witnesses and fact witnesses have become hostile as such at the moment it cannot be inferred that the applicant is involved in the commission of crime. The applicant has no criminal history. The applicant is in jail since 10.09.2020.

5. Learned AGA opposed the prayer for bail but could not dispute the fact that the fact witnesses have become hostile and they have not supported the prosecution case in their cross examination.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and

considering the argument that both the fact witnesses PW1 and PW4 have not supported the prosecution case in their cross examination, I find it to be a fit case for grant of bail.

7. Let the applicant, **Saheb Lal Verma**, 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