

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9351 of 2023

Applicant :- Bhola @ Jaishankar Kashyap

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

Counsel for Applicant :- Ram Asarey Verma

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicant, Sri G.D. Bhatt, learned A.G.A. for the State and perused record.
2. As per Office report of this Court dated 2.11.2023, the O.P. No.2 has been served personally but no one is present on behalf of O.P. No.2.
3. The first bail application Crl. Misc. Case No.11359 of 2019 was rejected by Hon'ble Mr. Justice Dinesh Kumar Singh, J. on 24.3.2022.
4. Learned counsel for the applicant has submitted that after rejection of first bail application, the statements of PW-1 to 4 have been recorded, therefore, this is second cause of action and he has moved this second bail application for bail in Case Crime No.303 of 2019 under Section 306, 376-D IPC and 3/4 of POCSO Act, PS Kheri, district Lakhimpur Kheri.
5. Learned counsel for the applicant has invited attention of this Court towards statements under Section 164 CrPC of PW-1, brother of deceased and PW-2 mother of deceased who have been declared hostile. Learned counsel for the applicant has further invited attention of this Court towards the statement of PW-3 Kapil and PW-4 Shiva who are witnesses, have also been declared hostile.
6. Learned counsel for the applicant has submitted that PW-1 Rohit Kumar Verma brother of deceased has deposed before the court that he has not seen his sister talking with Nitin Kumar and on the behest of villagers, he lodged FIR against Nitin Kumar and Vishal Raj. He has denied the entire version of statement under Section 161 CrPC and has further submitted that the applicant has not committed any offence and he has been falsely implicated. He has further deposed that he had not

given the name of the applicant to the police naming him. Lastly, the PW-1 has been declared hostile. Similarly, PW-2, Smt. Sunita mother of the deceased has also been declared hostile. The other important point has been raised by the learned counsel for the applicant that PW-3 Kapil Kishore and PW-4 Shiva who are the witnesses and have taken name of the applicant under Section 161 CrPC, but PW-3 and 4, both have been declared hostile by the Trial Court and he has annexed statement of PW-3 and 4 Kapil Kishore and Shiva. He has further submitted that after looking into the statement of PW-3 and 4, at the moment, it cannot be inferred that the applicant has committed crime. He has further submitted that there is no likelihood of trial to be concluded in near future. He has submitted that the applicant has no other criminal history and he is in jail since 2.6.2019.

7. Learned A.G.A. though opposed the prayer for bail but could not dispute the aforesaid facts and the fact that the PW-1, PW-2, PW-3 and 4 who are witnesses account, have been declared hostile.

8. Considering over all facts and circumstances of the case, the argument that PW-3 and 4 who are eyewitnesses account, have been declared hostile, the argument that PW-1 and 2 brother and mother of deceased have also been declared hostile, it is a fit case for bail.

9. Let the applicant, Bhola @ Jaishankar Kashyap 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.

10. 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 :- 6.11.2023

Rajneesh JR-PS)