

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9673 of 2023

Applicant :- Abhay Verma

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

Counsel for Applicant :- K.K. Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Sri K.K. Singh, learned counsel for the applicant and Sri Ran Vijay Singh, learned A.G.A. for the State.

2. The present second bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.368 of 2019 (Sessions Trial No. 944 of 2019) under sections 302/34 IPC, Police Station Thakurganj District Lucknow.

3. It has been submitted by learned counsel for the applicant that this is second bail application, as the first bail application of the applicant bearing Criminal Misc. Bail Application No. 14644 of 2021 was rejected by this Court on 18.05.2022.

4. Learned counsel for the applicant has submitted that in para-3 of the rejection order of bail, Court has mentioned that counsel for the applicant did not appear and illness was sent but the Court had considered the request for adjournment and again the case was listed 10.05.2022 but counsel for the applicant had sought adjournment on the ground of ill health, therefore, the case was directed to be listed peremptorily in the cause list and on 18.05.2023 case was decided in absence of counsel for the applicant.

5. Learned counsel for the applicant has submitted that after rejection of bail application of the applicant, Govind Shukla @ Uma Shanker Shukla (P.W.-1) has also been examined and he has been declared hostile. The name of the witness Govind Shukla is mentioned in the FIR as witness of the incident. Learned counsel for the applicant has submitted that he could not apprise the court regarding order of the co-accused Ajay Pal, the main

shooter, who has been granted bail by co-ordinate Bench of this Court vide order dated 26.02.2020 passed in Criminal Misc. Bail Application No. 504 of 2020. It has been submitted by learned counsel for the applicant that he could have placed the bail order of Ajay Pal before the Court but due to illness he could not place the same before the Court. He has also submitted that the case of the applicant is at par with the case of co-accused Ajay Pal because the name of the applicant as well as Ajay Pal came into light in the statement of co-accused Rijwan. He has also pressed the same argument as argued in the case of co-accused Ajay Pal. Govind Shukla @ Uma Shanker Shukla (P.W.-1), who has been examined by the trial court, has not assigned any role to the applicant. He has also not supported the prosecution case against other co-accused and has been declared hostile. Learned counsel for the applicant has explained the criminal history satisfactorily in para -19 of the affidavit filed in support of the bail application. He has further submitted that the applicant is in jail for more than four years and four months and many other witnesses are yet to be examined. He has relied upon para-16 of the judgment passed by Hon'ble the Supreme Court in the case of **Union of India vs. K.A. Najeer reported in AIR 2021 Supreme Court 712**. Para 16 of the judgment is being reproduced herein below:-

"This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."

6. Learned counsel for the applicant has submitted that the applicant may be enlarged on bail as he is in jail more than four years.

7. On the other hand, Sri Ran Vijay Singh Learned A.G.A. has opposed the prayer for bail but could not dispute the aforesaid facts.

8. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that the co-accused Ajay Pal having similar role has already granted bail by this Court, the argument that Govind Shukla @ Uma Shanker Shukla (P.W.-1) who is witness of the case has been declared hostile and the argument of period of incarceration of four years and four months in jail supported by the judgment passed by Supreme Court in **K.A. Najeeb** (supra), therefore, I am of the opinion that the applicant is entitled to be released on bail.

9. Let the applicant, namely, **Abhay 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.

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 :- 8.11.2023

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