

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9917 of 2023

Applicant :- Shatrohan Lal Shukla

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

Counsel for Applicant :- Rajiva Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the applicants, Sri Ran Vijay Singh, learned A.G.A. for the State and perused record.

2. The present bail application has been filed for bail in S.T. No.266 of 2018, Case Crime No.124 of 2018, under Section 302 IPC, PS Kheri, district Lakhimpur Kheri.

3. Learned counsel for the applicant has submitted that the complainant of the case Juguruta Devi PW-1 has been examined before the Trial Court and she has been declared hostile and she has not supported the prosecution case. PW-1 complainant has deposed before the Court that her husband is physically handicapped and he was riding tricycle near the Sharda canal and her two children; one the deceased Soni and other son Mohit were also along with him. While he was riding the tricycle at the canal, he felt nature call, therefore, he had gone to ease out himself and when he came back to the place, he found that deceased disappeared from the tricycle. She further deposed that the applicant has not thrown the daughter of the complainant in the canal and the said fact was also confirmed by Mohit who told her that father did not throw the deceased in the canal. She further deposed that written Tahreer was given by the villager on which she made signature and she further deposed that whatever had been written in the Tahreer, the same was not written by her. Lastly, she has been declared hostile.

4. Similarly, the PW-2 Jaskaran maternal grandfather (Nana) of deceased and father of complainant has also been declared hostile and PW-4 Santosh Kumar has also been declared hostile. The PW-3 is Sarhu of the applicant and is not eyewitness. He has simply stated that Mohit told him that deceased was done to death. The deceased was thrown in the canal by the applicant. Learned counsel for the applicant has submitted that after looking into the statement of PW-1, 2 and 4 at the moment, it cannot be presumed that the applicant has committed crime. He has further submitted that the applicant is in Jail since 16.4.2018 i.e., a long incarceration in Jail of 5 years and 7 months and sufficient time has been spent in Jail.

5. Learned counsel for the applicant has relied on the judgment of Hon'ble Supreme Court in the case of **Union of India. Vs. K.A. Najeeb, reported in**

AIR 2021 SC 712 (Para-16) which is quoted as under:-

"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 further submitted that all facts witnesses have been examined and now, there is no question of tampering the witnesses and the trial is not likely to be concluded in near future.

7. Learned A.G.A. has opposed the prayer for bail and has submitted that though, PW-1, 2 and 4 have been declared hostile but PW-3, Sarhu of the applicant has supported the prosecution case. He has also submitted that injuries received by the deceased could not have been caused while she was thrown in the canal. He has submitted that the bail is liable to be rejected.

8. Considering over all facts and circumstances of the case, the argument that PW-1 mother of deceased, PW-2 maternal grandfather of deceased and PW-4 grandfather of deceased have been declared hostile, the argument that the applicant is in Jail for the last 5 years 7 months supported by the judgment of K.A. Najeeb (*supra*), it is a fit case for bail.

9. Let the applicants, Shatrohan Lal shukla be released on bail in the above case crime number on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicants shall file an undertaking to the effect that they 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of his absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against them in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicants 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 applicants 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 them 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 :- 22.11.2023

Rajneesh JR-PS)