

Court No. - 19

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11077 of 2023

Applicant :- Suryamani Mishra Alias Sanju Mishra

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

Counsel for Applicant :- Chandan Srivastava, Yogesh Somvanshi

Counsel for Opposite Party :- G.A., Ashok Kumar Srivastava

Hon'ble Jaspreet Singh, J.

1. Counter-affidavit filed by the State is taken on record.
2. Heard Shri Chandan Srivastava, learned counsel for the applicant, Shri Ravish Chandra, Learned A.G.A. and Shri A. Srivastava, holding brief of Shri Ashok Kumar Srivastava for the complainant.
3. This is the second bail application moved by Suryamani Mishra alias Sanju Mishra who is arraigned in Case Crime No.1073 of 2016 under Sections 302, 307, 386 and 34 IPC, Police Station Kotwali Nagar, District Pratapgarh.
4. The first bail application of the applicant bearing No.5501 of 2017 came to be dismissed by this Court by means of order dated 18.10.2021.
5. Shri Chandan Srivastava, learned counsel appearing for the applicant has primarily raised three issues while pressing the second bail application. Firstly, it is urged that while dismissing the first bail application, this Court in paragraph 32 of its order dated 18.10.2021 had directed the trial court to expedite the trial and further directed that an endeavour be made to decide the trial within a period of six months. However, more than 16 months have lapsed and the trial has yet not concluded. Secondly, it has been urged that after the dismissal of the first bail application, the applicant is now diagnosed with a serious illness and it is at a pre cancerous stage which requires long term treatment with proper monitoring and accordingly considering the ailment of the applicant, he may be enlarged on bail and the applicant is ready to give an undertaking that he shall abide by any condition which may be imposed by the Court. Lastly, it has been urged by the learned counsel for the applicant that the applicant has been in jail since 31.12.2016,

six years and eleven months have lapsed and since the trial has not concluded, accordingly this is an additional factor to be taken into account and the applicant deserves to be enlarged apart from the fact that he has been falsely implicated in the aforesaid case.

6. The Court has called upon the learned A.G.A. to file his counter-affidavit and in the reply filed on behalf of the State, it has been stated that the applicant has been diagnosed with Leukoplakia and the applicant has got Mouth Ulcer also on the tongue and lower lip and finds difficulty in swallowing while opening of the mouth has also becomes small. It has further been stated that he is being treated from time to time at Kamla Nehru Memorial Hospital and he has been also diagnosed with (Oral Submucous Fibrosis) OSMF with Globus.

7. It has further been stated that the entire prosecution evidence is over and now the defence evidence is to commence, thus it is urged that the trial is at its concluding leg, accordingly the bail is deserves to be rejected. More so, when the applicant himself has been taking time.

8. The Court has heard the learned counsel for the parties including the counsel for the complainant and from the perusal of the material on record, it indicates that the applicant was apprehended in Case Crime No.1073 of 2016 and he is accused of killing Shive Bahadur while his brother Lal Bahadur received grievous injuries. This Court considering the material available on record including the statement which were placed before it on 18.10.2021 rejected the first bail application including noticing the fact that the applicant was previously convicted in Sessions Trial No.700 of 2008 and the incident which is subject matter of Case Crime No.1073 of 2016 occurred when the applicant was on bail granted in the Sessions Trial of 2008. This Court while rejecting first bail application had directed the trial court to conclude the trial preferably within six months. However, the applicant alongwith the second bail application has brought on record the certified copies of the order-sheet relating to the trial to state that much time has gone by and the entire evidence of the prosecution has concluded.

9. This Court further finds that in so far as the prosecution witnesses and their examination is concerned, the State has also admitted in paragraph 14 of the counter-affidavit that the entire prosecution evidence is over and all the 13 witnesses have been examined. The record especially the report submitted by the Jail Medical Superintendent has given his report dated 10.09.2023 wherein it has been indicated that the applicant suffers from Leukoplakia and (Oral Submucous Fibrosis) OSMF with

Globus which is a pre cancerous stage. It is taking note of the aforesaid that once the entire prosecution evidence is over, there does not appear to be any cogent apprehension that at this stage, the applicant may tamper with any evidence or influence any prosecution witness as the evidence already stands concluded.

10. Since the applicant suffers from Leukoplakia and (Oral Submucous Fibrosis) OSMF with Globus which requires long term treatment and may require specialize treatment and also keeping in mind the period of incarceration, accordingly at this stage without entering into the merits, this Court finds that the applicant be enlarged on bail subject to furnishing of two heavy reliable local sureties to the satisfaction of the trial 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.

(v) The applicant shall not leave the State without prior informing to the trial court.

11. Accordingly, the second bail application is allowed.

Order Date :- 3.11.2023

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