

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11485 of 2023

Applicant :- Nitesh Tiwari

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

Counsel for Applicant :- Shishir Pradhan, Sushil Kumar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Rajendra Prasad, Advocate holding brief of Shri Shishir Pradhan, learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

2. This second bail application has been moved on behalf of the accused/applicant- **Nitesh Tiwari** for grant of bail, in F.I.R./Case Crime No. 0123 of 2019, under Section 307 and 302 I.P.C., Police Station Ashpurdevsara, District Pratapgarh, during trial, as his first bail application has been rejected by a co-ordinate Bench of this Court, presided over by Hon'ble Shamim Ahmed, J., vide order dated 30.11.2022 passed in Criminal Misc. Bail Application No. 2180 of 2020. However, the Hon'ble Judge who has rejected the first bail application of the applicant has released the instant bail application.

3. Learned counsel for the accused-applicant submits that the co-ordinate Bench while rejecting the first bail application of the applicant on 30.11.2022 has issued a direction to the trial Court to conclude the trial expeditiously preferably within a period of six months without granting unnecessary adjournments to either party, however, the same has not concluded yet.

4. It is further submitted that the story, as cooked up by the prosecution is highly concocted and could not be believed on the touchstone of probability and the recovery, as shown by the police on the pointing of the applicant could also not be believed in absence of independent prosecution witnesses.

5. It is vehemently submitted that the prosecution is deliberately not producing witnesses in order to keep the applicant in jail for a long time. Criminal history of one case is being alleged against the applicant, however, the same has been explained. Applicant is languishing in jail in this case since 04.10.2019 and keeping in view the pace with which the trial is going on before the trial Court, the same is not going to conclude in near future and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise

misuse the liberty.

6. Learned A.G.A. on the other hand submits that the first bail application of the applicant has been rejected by a co-ordinate Bench of this Court and since then many prosecution witnesses have been testified before the trial Court and the trial appears to be at concluding stage and, therefore, having regard to the role assigned to the instant applicant, he is not entitled to be released on bail.

7. Having heard learned counsel for the parties and having perused the record, it is reflected that there are at least 04 prosecution witnesses, namely, Pradeep Kumar Gupta, Shani Tiwari, Guddu Pandey and Suresh Shahu who have either seen themselves firing gun shots towards the deceased by the applicant or have reached the spot immediately and have been informed that it was the applicant who had fired the gun shot towards the deceased. A country-made pistol is also shown to have been recovered on the pointing of the applicant. The postmortem report of the deceased Devanand Tiwari would reveal that the applicant has sustained 05 injuries and cause of death has been ascertained as 'septicemic', as a result of 'antemortem firearm injuries'. Thus, prima facie the medical report appears to be in line with the oral evidence.

8. This Court vide order dated 04.10.2023 had directed the trial Court to submit a report with regard to the status of the trial and the same has been submitted vide communication dated 12.10.2023 informing that till that date (12.10.2023), 08 prosecution witnesses have been testified and within next two months the case may be finally adjudicated.

9. Having regard to all the facts and circumstances of the case and keeping in view the role assigned to the instant applicant in commission of the crime and also the stage to which trial has advanced before the trial Court, I do not find any change in the circumstances since the rejection of the first bail application of the applicant. Thus, this second bail application of the applicant is also **rejected**.

10. The trial Court is directed to conclude the trial with utmost expedition without granting unnecessary adjournments to the either party, if possible within next three months, if there is no legal impediment.

11. A copy of this order be sent to the trial Court through Sessions Judge concerned for strict compliance.

Order Date :- 16.11.2023/Praveen