

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12336 of 2023

Applicant :- Upendra Tiwari Alias Monu

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

Counsel for Applicant :- Ratnesh Kant Agnihotri

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Sri Nadeem Murtaza has filed his power on behalf of the complainant which is taken on record.
2. Heard learned counsel for the applicant, learned counsel for complainant, Sri Rajneesh Kumar Verma, learned A.G.A. for the State and perused record.
3. The first bail application CrI. Misc. Bail Application No.7416 of 2020 was rejected by this Court on 22.10.2021.
4. Learned counsel for the applicant has submitted that the said order dated 22.10.2021 was challenged before the Hon'ble Supreme Court in Special Leave to Appeal (CrI.) No(s).263 of 2022 and Hon'ble Supreme Court has passed order and direction was issued to move bail application in case trial is not concluded in one year. Thereafter, Miscellaneous Application No.1720 of 2023 was moved in the said SLP, the said period of one year had not expired and it was brought to the notice of Hon'ble Supreme Court that in the matter the co-accused in the instant case, have been granted bail. Thereafter, Hon'ble Supreme Court granted liberty to renew the bail prayer even within the said period of one year which is indicated in the order dated 31.8.2023 passed in the said miscellaneous application filed in SLP, a copy of the said order dated 31.8.2023 is annexed as Annexure No.2 to the bail application.
5. Learned counsel for the applicant has submitted that the said order dated 10.1.2023 of Hon'ble Supreme Court was modified and liberty has been granted to the applicant to file a fresh bail application. Thus, the present second bail application has been filed before this Court S.T. No.1466 of 2021, Case Crime No.24 of 2020 under Section 147, 148, 149, 302, 34 & 120-B IPC PS

Krishna Nagar, district Lucknow.

6. Learned counsel for the applicant has submitted that co-accused Vinayak Thakur alias Vinayak Bacchan Singh has been granted bail by this Court in Crl. Misc. Bail Application No.107 of 2023 on 25.4.2023 (Annexure No.5); co-accused Shubham Yadav has been granted bail by this Court in Crl. Misc. Bail Application No.6765 of 2023 on 11.7.2023 (Annexure No.6), co-accused Mustafa @ Gulam Mustafa has been granted bail by this Court in Crl. Misc. Bail Application No.9739 of 2023 on 9.8.2023 (Annexure No.16), co-accused Manjeet Singh alias Robin has been granted bail by this Court in Crl. Misc. Bail Application No.8864 of 2023 on 27.7.2023 (Annexure No.17); co-accused Anil Gupta has been granted bail by this Court in Crl. Misc. Bail Application No.13688 of 2021 on 22.5.2023 (Annexure No.18).

7. Learned counsel for the applicant has submitted that the applicant has been assigned identical role as the co-accused who have been granted bail by this Court and the applicant is entitled for bail. He has explained the criminal history of the applicant in para-37 satisfactorily. He has further submitted that the applicant is in Jail since 11.1.2020.

8. On the other hand, learned A.G.A. opposed the prayer for bail but could not dispute the fact that the case of the applicant is at par with the co-accused who have been granted bail by this Court.

9. Considering the over all facts and circumstances of the case, the argument that the case of applicant is identical with the co-accused who have been granted bail, it is a fit case for bail.

10. Let the applicant, namely, Upendra Tiwari alias Monu 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.

11. 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 :- 23.11.2023

Rajneesh JR-PS)