

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12699 of 2023

Applicant :- Sagir

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

Counsel for Applicant :- Naveen Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned AGA informs that he has procured complete instruction in the matter including upto date case diary.
2. Heard Shri Naveen Kumar Pandey, learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Sagir** for grant of bail, in Case Crime No. 305/2020, under Sections 498-A, 304-B IPC and 3/4 Dowry Prohibition Act, Police Station Katra Bazar, District Gonda, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant was earlier granted bail in this case, vide order dated 24.3.2021 passed in Crl. Misc. Bail Application No. 3727 of 2021 and he was regularly attending the Court and had instructed his counsel engaged at the level of trial court to do all necessary for smooth progress of the case, however, it appears that the exemption application moved on behalf of the applicant was rejected by the trial court. But the information of rejection of exemption application of the applicant was not given by learned counsel to him (applicant) and it is on this account he could not present himself before the trial court.
5. It is also submitted that while engaging counsel before the trial court, it was agreed that learned counsel shall remain present before the trial court and will do all necessary works, even if the applicant is not able to appear before the trial court.
6. It is further submitted that the applicant has not willfully kept himself away from the trial court and undertakes that he will remain present before the trial court on all the dates

whenever his presence would be required and would not seek any adjournment especially when the prosecution witness would be in attendance or on the date where on the personal presence of the applicant is required.

7. It is also submitted that the prosecution witness no.5 the Investigating Officer, Shri Munna Upadhyay is required to appear before trial court for cross examination and the applicant is ready to deposit a reasonable amount with the trial court so as to bear the travel expenses of the witnesses.

8. It is further submitted that even after the release of the applicant on bail by this Court, he is in jail in this case without any fault of him since 22.8.2023 and there is no apprehension that after release on bail the applicant may again avoid any conditions which may be placed by this Court or by the trial court.

9. Learned A.G.A. on the other hand submits that the applicant is an absconder and therefore he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that earlier the applicant was granted bail by the Coordinate Bench of this Court, vide order dated 24.3.2021. The rejection order of the applicant would demonstrate that with regard to cross examination of the informant, learned counsel for the applicant had consumed 4 days and thereafter the statement of P.W.3 was recorded on 25.4.2023 and due to non availability of the applicant, personal exemption application was moved which was allowed with a condition that on the next date of listing cross examination would be done but again on 15.5.2023 an exemption application was moved which was rejected and opportunity of applicant to cross examine P.W.4 was closed. On 24.5.2023 the P.W.5- Investigating Officer- Munna Upadhaya was present who is a retired D.S.P. and on this date also personal exemption application was moved which was rejected by the trial court. Now it is submitted on behalf of the applicant that it was due to the laxity shown on behalf of the learned counsel engaged at the level of the trial court, which has resulted in rejection of the exemption application by the trial court as the counsel has not cross examined the prosecution witness resulted in issuance of N.B.W. and rejection of bail application by trial court.

11. Be that as it may, the applicant is in jail in this case since 22.8.2023, he was already granted bail by a Coordinate Bench of this Court though there appears nothing wrong in the order of the trial court whereby the facility of bail earlier granted to the

applicant, has been cancelled, but in order to provide another opportunity to the applicant to participate in the trial, in the considered opinion of this Court subject to certain strict conditions, the facility of bail may again be extended to him. The bail application of the applicant is, thus, **allowed**.

12. Let the applicant- **Sagir** involved in the aforesaid case be released on bail on furnishing a personal bond with two heavy sureties, one of which would be blood relative of the applicant, in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall deposit Rs. 10,000/- before the trial court along with a copy of this order and the said amount may be utilized by the trial court for reimbursing the travelling expenses of P.W.5, Retired Deputy S.P.- Munna Upadhyay, as he would be required to appear again before the trial court, for cross examination.

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(v) The applicant shall file an undertaking before the trial court to the effect that he (applicant) shall appear on each and every date of listing of the case and also that he shall not seek any adjournment when the prosecution witnesses would be in attendance and if for any reason which is not in the control of the applicant, he could not remain present before the trial court his counsel engaged at the level of trial court shall remain present. In violation of this condition alone would be sufficient for the trial court to cancel his bail granted by this Court.

13. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

14. If any amount, after paying the travelling expenses of witness Munna Upadhyay is left, the same shall be deposited in the account of District Legal Services Authority, Gonda.

15. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

16. It is clarified that this Court has not opined anything with regard to the order of the trial court dated 15.5.2023, whereby opportunity of the applicant to cross examine has already been rejected.

17. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 30.10.2023

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