

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15336 of 2022

Applicant :- Parasuram Alias Tintu

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

Counsel for Applicant :- Atul Verma,Hari Krishna Verma,Sanjeet Kumar Patel

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Atul Verma, learned counsel for the applicant, Shri Onkar Nath Pandey, learned brief holder for the State and perused the record.
2. This is the second bail application. The first bail application was rejected by coordinate bench of this Court on 27.04.2022. It is submitted that till rejection of first bail application, fact witnesses were not examined therefore, new cause of action has arisen.
3. The present bail application has been filed by the applicant **Parasuram @ Tintu** with a prayer to enlarge him on bail in Case Crime No.725 of 2019, under Sections -302, 315 IPC., Police Station- Gosaiganj, District Lucknow.
4. It is contended by learned counsel for the applicant that after rejection of first bail application, the statement of fact witnesses have been recorded. He pointed out that PW1, Manoj Kumar who is Gaon Pradhan has been declared hostile, copy of the statement has been filed as Annexure 4 to the bail application. Learned counsel further submitted that PW4, Dashrat Rawat, the landlord is also the fact witness has not supported the prosecution case. He deposed before the court that he had not seen the incident and he did not gave any statement to the police and the police got his signatures but content on the paper was not read before him. Learned counsel submitted that the other witnesses are formal witnesses therefore, at this moment, it cannot be inferred that the applicant was involved in the commission of crime as both the fact witnesses have become hostile the applicant is entitled to be enlarged on bail. The applicant has no criminal history. The applicant is languishing in jail since 28.09.2019.
5. Learned AGA for the State opposed the prayer for bail but could not dispute the aforesaid submission made by learned counsel for the applicant that both the fact witnesses have not supported the prosecution case.
6. Without expressing any opinion on the merits of the case, after hearing learned counsel for the parties and

looking to the fact that both the fact witnesses PW1 and PW4 have not supported the prosecution case, it is a fit case for grant of bail.

7. Let the applicant, **Parasuram @ Tintu** 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.

8. 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 :- 16.10.2023

Pks