

Court No. - 80

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1100 of 2024

Applicant :- Rajat Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Kumar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Sri Anil Kumar Dubey, learned counsel for the applicant, Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record.
2. Learned counsel for the applicant submits that he had taken time for filing supplementary affidavit but he does not intend to file any supplementary affidavit.
3. This second bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant **Rajat Kumar**, seeking enlargement on bail during trial in connection with Case Crime No. 113 of 2023, under Section 306 I.P.C., registered at Police Station Nagina, District Bijnor.
4. The first bail application of the applicant was rejected by this Court vide order dated 26.07.2023 passed in Crl. Misc. Bail Application No. 32714 of 2023 (Rajat Vs. State of U.P.).
5. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. It is submitted that the trial in the present matter has started and the statement of the first informant/Subhash has been recorded as PW-1, copy of the statement has been placed before the Court which is annexure S.A.1 to the supplementary affidavit dated 15.07.2024. Further, learned counsel for the applicant has submitted while placing paras nos. 6, 7, 8, 9 and 10 of the said supplementary affidavit that there is a delay in trial and various judgments of the Apex Court hold that the delay in trial violate the fundamental right of a person and as such the applicant be released on bail. It is submitted that the first informant in his cross examination has stated that he does not know as to whether the accused persons were present with his son at the time of incident or not. It is submitted that as such the

applicant be enlarged on bail. It is further submitted while placing the judgment of the Apex Court in the case of **Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu and another : (2012) 9 SCC 446, Prabhakar Tewari Vs. State of U.P. and another : (2020) 11 SCC 648** and further of a co-ordinate Bench of this Court passed in **Crl. Misc. Bail Application No. 11480 of 2023 (Sumit Awasthi Vs. State of U.P.)** decided on 19.07.2023 that the criminal history of an accused cannot be a ground for refusing bail. It is submitted that as such the bail be granted. The applicant is in jail since 18.04.2023.

6. Per contra, learned counsel for the State opposed the prayer for bail and submitted that the first bail application of the applicant has been rejected by a detailed order on merits by this Court on 26.07.2023. It is submitted that the trial in the present matter is going on in which one witness has been examined who has supported the prosecution case and as such it cannot be said that the trial is not in progress. It is further submitted that the applicant reported to be having a criminal history of 11 cases and the cases are heinous in nature. The said fact was also considered while deciding the first bail application of the applicant. It is submitted that there is no fresh and new ground in the present bail application and as such the present bail application of the applicant be rejected.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the first bail application of the applicant has been rejected by this Court vide order dated 26.07.2023. The same reads as under:

"1. Heard Sri Bhuvnesh Kumar Singh, learned counsel for the applicant and Sri Virendra Pratap Singh, learned counsel for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Rajat, seeking enlargement on bail during trial in connection with Case Crime No. 113 of 2023, under Section 306 I.P.C., registered at Police Station Nagina, District Bijnor.

3. The first information report of the present case was lodged on 16.04.2023 by Subhash under Sections 306 IPC against the applicant, co-accused Rajat, Jitendra @ Tata, Raja, Junaid, Mustafa, alleging therein that his son Satyam lives in Bijnor. He is student of B.Sc. third year. Accused persons are the persons of criminal nature. They had enmity with his son due to his good carrier. The deceased is of a backward caste carpenter. The accused persons used to implicate his son due to which he was disturbed. They used to instigate him for committing suicide. His son recorded a video on his mobile and disclosed it. On 9.4.2023 at about 6:00 P.M. his son committed suicide on railway line between Kalakhedi gate and lalwala gate. The first information report has been lodged.

4. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. Learned counsel for the applicant argued that there is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased.

The applicant has no mens-rea at all. There is no overt act whatsoever of the applicant which resulted in the death of the deceased, the applicant has no motive at all to commit the aforesaid offence. The deceased committed suicide and died before a moving train. It is argued that applicant is not involved in the present case. It is argued that co-accused Jitendra @ Tata has been granted bail by the Additional Sessions Court, POCSO Act, Bijnor, vide order dated 19.06.2023 passed in Second Bail Application No. 1795 of 2023. It is further argued that co-accused Shahjad has been granted bail by this Court vide order dated 05.07.2023 passed in Criminal Misc. Bail Application No. 29224 of 2023, the copy of the said order is annexed as Annexure-10 to the affidavit. It is further argued while placing paragraph 26 of the affidavit that the applicant is involved in 10 other cases and in the said cases he is on bail. Annexure-9 to the affidavit being the bail orders passed by the concerned court has been placed before the Court. The applicant is in jail since 18.04.2023.

5. Per contra, learned counsel for the State vehemently opposed the prayer for bail and argued that the applicant is named in the first information report. The applicant has criminal history of 11 cases apart from the present case. It is argued that there is one other case under the Goondas Act which has neither been disclosed nor explained in the criminal history of the applicant. It is argued that the criminal history of the applicant of 11 cases is as under:-

(i) Case Crime No. 376 of 2015, under Sections 394, 411 I.P.C., registered at Police Station Nehtaur, District Bijnor.

(ii) Case Crime No. 325 of 2015, under Section 394 I.P.C., registered at Police Station Seohara, District Bijnor.

(iii) Case Crime No. 655 of 2015, under Sections 392, 411 I.P.C., registered at Police Station Kotwali City, District Bijnor.

(iv) Case Crime No. 216 of 2016, under Section 3 (1) of U.P. Gangster Act, registered at Police Station Seohara, District Bijnor.

(v) Case Crime No. 153 of 2017, under Sections 147, 148, 149, 307, 336, 335 I.P.C. and 7 Criminal Law Amendment Act, registered at Police Station Sherkot, District Bijnor.

(vi) Case Crime No. 190 of 2020, under Section 60 of Excise Act, registered at Police Station Sherkot, District Bijnor.

(vii) Case Crime No. 434 of 2015, under Section 307 I.P.C., registered at Police Station Thakurdwara, District Moradabad.

(viii) Case Crime No. 411 of 2015, under Section 392, 411 I.P.C., registered at Police Station Thakurdwara, District Moradabad.

(ix) Case Crime No. 437 of 2015, under Section 25 Arms Act, registered at Police Station Thakurdwara, District Moradabad.

(x) Case Crime No. 247 of 2019, under Section 3/25 of Arms Act, registered at Police Station Sherkot, District Bijnor.

(xi) Case Crime No. 270 of 2016, under Section 3 (1) of the U.P. Goonda Control Act, registered at Police Station Sherkot, District Bijnor.

6. It is argued that co-accused who have been granted bail were not having any criminal history as is evident from the order passed in the bail applications and as such the case of the applicant is distinguishable with that of co-accused.

6. After having heard learned counsel for the parties and perusing the record, it is evident that the applicant is named in the first information report. The applicant has criminal history of 11 cases apart from the present case. Co-accused who have been granted bail were not having any criminal history.

7. Looking to the facts and circumstances of the case and long criminal history of the applicant, this Court does not find it a fit case for bail, hence, the bail application is rejected."

8. The trial in the present matter is going in which one witness has been examined, it cannot be said that the trial is not under progress. In so far as the ground of criminal antecedents are concerned, the same were considered while rejecting the first bail application of the applicant. The earlier involvement of the applicant in various other cases goes to show that the cases are different in nature which show his involvement in criminal activity. I do not find it a fit case for bail.

9. Considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail.

10. The present bail application is, accordingly, **rejected**.

Order Date :- 12.11.2024

M. ARIF

(Samit Gopal, J.)