

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2803 of 2023

Applicant :- Jagdish

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

Counsel for Applicant :- Sanjay Singh Chauhan, Alok Kumar Singh, Mohd. Nafees, Santosh Kumar Kanaujia

Counsel for Opposite Party :- G.A., Ashok Kumar Singh

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Santosh Kumar Kanaujia, learned counsel for the applicant and Shri G.D. Bhatt, learned A.G.A. for the State and Shri Ashok Kumar Singh, learned counsel for the informant/complainant.

2. This is the second bail application. The first bail application has been rejected by Hon'ble Dinesh Kumar Singh, J. vide order dated 22.9.2022 passed in Criminal Misc. Bail Application No. 6647 of 2022 (Annexure No. 1), which reads as under:

"1. Heard learned counsel for the applicant and Sri Ran Vijay Singh, learned A.G.A. and perused the record.

2. The present application under Section 439 Cr.P.C. has been filed seeking bail in Case Crime No.699 of 2021, under Section 302/34 IPC, Police Station Nighasan, District Kheri.

3. Allegation against the accused-applicant and other co-accused is that they had killed the deceased Shiv Kumar, son of the complainant on 25.12.2021 by causing fire arm injury and stabbed wound.

4. Post-mortem report would suggest the following ante-mortem injuries on the body of the deceased:-

"1. 3 punctured wounds in an area are 10 cm x 8 cm over chin and both sides of neck, largest 1.5 cm x 0.5 cm x muscle deep smallest 1 cm x 0.5 cm x muscle deep.

2. Fire arm entry wound 1 cm x 1 cm x chest cavity deep on mid line in front of chest 8 cm below supra sternal notch blackening and tattooing present 1 cm around the neck margins inverted, irregular and ecchymosed.

3. Fire arm exit wound 1 cm x 1 cm on left side back of chest 18 cm below back of root of neck and 3 cm away from midline at 90° clock position left pleura, left lung pericardium, heart found lacerated and 1 liter margins

inverted."

5. The motive/mens rea for committing the murder is alleged illicit relation of the deceased with the sister of the accused-applicant.

6. Learned AGA has opposed the prayer for bail, but not disputed the aforesaid facts.

7. Considering the heinousness of offence and in involvement of the accused-applicant in the commission of offence, this Court does not find any ground to enlarge the accused-applicant on bail at this stage.

8. Bail application is accordingly rejected.

9. However, if the witnesses of fact are examined and they do not support the prosecution case, the accused-applicant may revive the prayer for bail before this Court by filing a fresh bail application.

10. The trial court is directed to record the statements of the witnesses of fact as early as possible.

11. Let a copy of this order be forwarded to the concerned trial court for necessary compliance."

3. Learned counsel for the applicant has submitted that while rejecting the first bail application of the present applicant, a coordinate Bench of this Court directed the trial court to record the statements of the fact witnesses as early as possible. He has further submitted that the statement of all the fact witnesses have been recorded and the case is fixed for mandatory exercise under Section 313 CrPC. Though one application has been filed on behalf of the defence, therefore, the statement of the accused persons under Section 313 CrPC could not be recorded till date. He has further submitted that as and when the statement under Section 313 CrPC would be recorded, thereafter, the defence witnesses, if any, may be examined. After that, the case would be fixed for arguments. Hence, some substantial time may likely to take place to conclude the trial finally.

4. He has further submitted that the Hon'ble Apex Court in re: **Gokarakonda Naga Saibaba vs. State of Maharashtra**, reported in **(2018) 12 SCC 505** has held that if the evidence of fact witnesses are recorded, the bail of the accused persons may be considered.

5. Learned counsel for the applicant, the present applicant is in jail since 13.1.2022 in FIR/Case Crime No. 699 of 2021, under Sections 302/34 IPC, Police Station- Nighasan, District- Kheri.

6. Learned counsel for the applicant has also drawn the attention of this Court towards the order dated 19.3.2024 passed by this Court in Criminal Misc. Bail Application No. 147 of

2023, whereby the co-accused Chhotu @ Anoop Kumar has been granted bail. In the aforesaid bail order, this Court had considered the aforesaid facts which have been submitted by him.

7. For the convenience, the aforesaid order dated 19.3.2024 is being reproduced hereunder:

"1. Heard Sri Suresh Chandra Pandey, learned counsel for the applicant, Sushil Kumar Pandey, learned Additional Government Advocate for the State and Ashish Kumar Tiwari holding brief of Sri Ashok Kumar Singh, learned counsel for the complainant as well as perused the material available on record.

2. As per the learned counsel for the applicant, the present applicant is languishing in jail since 13.01.2022 in Case Crime No.699 of 2021, under Section 302/34 IPC, Police Station Nighasan, District Kheri.

3. Learned counsel for the applicant has submitted that the present applicant has falsely been implicated in this case as he has not committed any offence as alleged in the prosecution story. He has further submitted that applicant is not named in the FIR. He has further submitted that the name of the applicant surfaced after 12 days of the incident in the statement of brother of the deceased, as such the case is based on circumstantial evidence. He has further submitted that as per post-mortem report, the cause of death is occurred due to shock and hemorrhage. He has further submitted that out of total 24 prosecution witnesses, only aforesaid 10 witnesses have been examined. Those ten witnesses, who have been examined, are the star/fact witnesses. He has further submitted that co-accused, namely, Raju @ Rajesh Kumar Pal, Keshav Pal and Rajendra Kumar, having similar role to that of present applicant, have already been granted bail by Co-ordinate Benches of this Court vide orders dated 08.02.2023, 14.02.2023 and 22.02.2023 passed in CrI. Misc. Bail Application nos. 6633 of 2022, 6510 of 2022 and 3930 of 2022 respectively. He has further submitted that there is no possibility of the applicant of fleeing away from the judicial process or tampering with the witness and in case the applicant is enlarged on bail, the applicant shall not misuse the liberty of bail. It is also submitted that the applicant has no previous criminal history and he is languishing in jail since 13.01.2022, therefore, on the basis of principles of parity, the present applicant may also be released on bail.

4. Learned counsel for the applicant has further submitted that since there is no possibility to conclude the trial in near future, therefore, in view of the dictum of Hon'ble Apex Court in re: Union of India vs. K.A. Najeeb AIR 2021 Supreme Court 712 and Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation passed in Criminal Appeal No.693 of 2021 (Arising out of SLP (CrI.) 3610 of 2020 granting bail to those accused persons on the ground that there is no possibility to conclude the trial in near future and there is a long incarceration of that accused, therefore, they were entitled for bail. Para-15 of the case K.A.Najeeb (supra) is being reproduced here-in-below:-

"This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its

protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."

5. The Apex Court in the case of Paras Ram Vishnoi (supra) has observed as under:-

"On consideration of the matter, we are of the view that pending the trial we cannot keep a person in custody for an indefinite period of time and taking into consideration the period of custody and that the other accused are yet to lead defence evidence while the appellant has already stated he does not propose to lead any evidence, we are inclined to grant bail to the appellant on terms and conditions to the satisfaction of the trial court."

6. Learned counsel for the applicant has further drawn attention of this Court towards the dictum of Apex Court rendered in re: Gokarakonda Naga Saibaba vs. State of Maharashtra reported in (2018) 12 SCC 505 wherein the Apex Court has observed that if the material and fact witnesses have been examined, the bail of the accused persons may be considered.

7. Learned Additional Government Advocate has vehemently opposed the prayer for bail of the present applicant by submitting that since involvement of the applicant has been found in the commission of crime, therefore, he may not be enlarged on bail, but he could not dispute the aforesaid submissions of learned counsel for the applicant.

8. Considering the aforesaid submissions of learned counsel for the parties and the fact that there are 24 prosecution witnesses, out of them, only 10 witnesses have been examined; those 10 witnesses are the star/fact witnesses; the applicant is not named in the FIR; the applicant has no previous criminal history; the co-accused, having similar role, have been granted bail; the period of incarceration of the applicant; there is no likelihood to conclude the trial shortly; the various dictum of Apex Court and without expressing any opinion on merits of the case, I am of the opinion that the present applicant may be released on bail and thus, this bail application is, therefore, allowed.

9. Let the applicant, Chhotu @ Anoop Kumar, be released on bail in the aforesaid case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the 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 fail 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.

(v) The applicant shall not leave the country without prior permission of the Court.

10. Before parting with, it is expected that the trial shall be concluded with expedition in terms of Section 309 Cr.P.C. Further, the learned trial court may take all coercive measures, as per law, if either of the parties do not co-operate in the trial proceedings properly."

8. In view of the aforesaid facts and circumstances, learned counsel for the applicant has stated that the present applicant may be enlarged on bail. The present applicant is having no prior criminal history of any kind whatsoever as recital to this effect has given in para no. 43 of the bail application, which is undisputed. Learned counsel has stated that the applicant undertakes that if he is released on bail, he shall abide by all terms and conditions of the bail order and shall not misuse the liberty of bail and shall participate in the trial proceedings.

9. Learned A.G.A. has, however, opposed the prayer for bail but he could not dispute the aforesaid submissions of learned counsel for the applicant.

10. Without entering into the merits of the case; considering the arguments of learned counsel for the parties; the dictum of the Hon'ble Apex Court in **Gokarakonda Naga Saibaba (supra)**; the detention of the applicant in jail for about two years and four months i.e., since 13.01.2022; despite the fact witnesses having been examined, the statements of the accused persons under Section 313 CrPC have not been recorded till date; the co-accused Chhotu @ Anoop Kumar has already been granted bail by this Court; the applicant has no prior criminal history of

any kind whatsoever; and undertaking of the applicant that he shall abide by all conditions of the bail order and cooperate in the trial court proceedings, I find it appropriate to release the present applicant on bail.

11. Accordingly, the bail application is **allowed**.

12. Let applicant- **Jagdish**, be released on bail in the aforesaid case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the 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.

(v) The applicant shall not leave India without previous permission of the court.

Order Date :- 17.5.2024

Shravan