

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2992 of 2024

Applicant :- Ateeq

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

Counsel for Applicant :- Dildar Khan, Rehan Ahmad Siddiqui

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

Heard Sri Rehan Ahmad Siddiqui, learned counsel for the applicant and Sri Ashok Kumar Singh, learned A.G.A.-I for the State and perused the record.

This application has been filed seeking the release of the applicant on bail in F.I.R./Case Crime No. 218 of 2019, under Sections 394, 307, 302, 120-B I.P.C., Police Station Kotwali Nagar, District Pratapgarh.

This is the second bail application moved on behalf of the applicant. The first bail application was rejected by this Court vide order dated 20.09.2022 passed in Criminal Misc. Bail Application No.14924 of 2021.

Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case due to village party bandi only with intention to defame the image of the applicant and his entire family in the society. No such incident as alleged by the prosecution took place.

He further submits that the first information report was lodged by the informant Anjani Kumar Vaishya against three unknown persons on 09.03.2019 at 09.15 PM at Police Station- Kotwali City, Pratapgarh stating therein that on 09.03.2019 at about 07.50 PM, he along with his nephew Rishabh, Harilal and servant Shankar Lal and with other some customers was at his shop and at that point of time, three unknown persons came on a motorcycle and one of those accused persons remained seated on the motorcycle and the two persons one of which had hidden his face by a scarf, came to his shop and they both took out pistols and started assaulting them and has looted Rs. 15,000/- kept in the cash box and fled away on the motorcycle by firing in the air and also fired a gun shot towards Ashok Sharma.

He further submits that the applicant was not named in the F.I.R. nor he has been identified by any other person and he has been arrayed as an accused in this case without there being any evidence or material. The name of the applicant has been taken in the confessional statement of the co-accused and one witness, namely, Sunil Kumar.

He further submits that in the statement recorded under Section 161 Cr.P.C. of the informant, he did not take name of the present applicant nor any other accused persons. The witness Sunil Kumar has taken name of the applicant alongwith other co-accused Taukeer but he did not identify the other person, namely, Mukhtar. He further submits that one of the co-accused, Zaid in his

confessional statement had taken name of the accused applicant, however, he was not present at the time of incident, thus, his statement could not be believed as it has been given under the pressure of police personnel. The subsequent statement of the informant was also recorded but the same is unbelievable as there is no proper explanation.

He further submits that the recovery of alleged weapon i.e. country made pistol was made on the pointing out of co-accused, Mukhtar and even at the time of recovery, there is no independent witness, thus, recovery cannot be believed. He further submits that P.W.-1 Anjani Kumar Vaishya, P.W.-2 Rishabd and P.W.-3 Sunil have not supported the prosecution case before the learned trial court, as such, they have been turned hostile. Copies of their statements have been annexed as annexure no.7, 8 and 9 respectively to the affidavit filed alongwith the bail application.

He further submits that co-accused, Mukhtar, who has been assigned with the role of having country made pistol, had already been enlarged on bail by co-ordinate Bench of this Court vide order dated 01.03.2023 passed in Criminal Misc. Bail Application No.14006 of 2021 and even the co-accused, Mohd. Zaid had also been enlarged on bail by co-ordinate Bench of this Court vide order dated 28.07.2021 passed in Bail Application No.9904 of 2019 and the case of the present applicant is not on the worse footing than that of the co-accused, therefore, the present applicant may also be released on bail by this Court sympathetically.

Learned counsel further submits that the applicant is in detention since 16.09.2019 and has already undergone a substantial period of detention. In support of his contention, learned counsel for the applicant has placed reliance of Hon'ble Apex Court judgment in the case of **Kamal Vs. State of Haryana, 2004 (13) SCC 526** and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under :-

"2. This is a case in which the appellant has been convicted u/s 304-B of the India Penal Code and sentenced to imprisonment for 7 years. It appears that so far the appellant has undergone imprisonment for about 2 years and four months. The High Court declined to grant bail pending disposal of the appeal before it. We are of the view that the bail should have been granted by the High Court, especially having regard to the fact that the appellant has already served a substantial period of the sentence. In the circumstances, we direct that the bail be granted to the appellant on conditions as may be imposed by the District and Sessions Judge, Faridabad."

Learned counsel for the applicant has also placed reliance of Hon'ble Apex Court judgment in the case of **Takht Singh Vs. State of Madhya Pradesh, 2001 (10) SCC 463**, and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under:-

"2. The appellants have been convicted under Section 302/149, Indian Penal Code by the learned Sessions Judge and have been sentenced to imprisonment for life. Against the said conviction and sentence their appeal to the High Court is pending. Before the High Court application for suspension of sentence and bail was filed but the High Court rejected that prayer indicating therein that the applicants can renew their prayer for bail after one year."

After the expiry of one year the second application was filed but the same has been rejected by the impugned order. It is submitted that the appellants are already in jail for over 3 years and 3 months. There is no possibility of early hearing of the appeal in the High Court. In the aforesaid circumstances the applicants be released on bail to the satisfaction of the learned Chief Judicial Magistrate, Sehore. The appeal is disposed of accordingly."

Learned counsel for the applicant further submits that ratio of law applicable in aforesaid cases is also applicable in the case of the present applicant, therefore, the applicant be enlarged on bail by this Court sympathetically.

Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length. It has been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It has also been pointed out that the accused 16.09.2019 and criminal history of the applicant has been explained at para 21 of the affidavit filed alongwith the bail application and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Learned A.G.A.-I opposed the prayer for bail and submits that the applicant has committed a heinous offence and prima facie case is made out against the applicant, thus, he is not entitled to be released on bail.

After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also in the absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that the applicant was not named in the F.I.R. nor he has been identified by any other person and he has been arrayed as an accused in this case without there being any evidence or material; the name of the applicant has been taken in the confessional statement of the co-accused and one witness, namely, Sunil Kumar; the recovery of alleged weapon i.e. country made pistol was made on the pointing out of co-accused, Mukhtar and even at the time of recovery, there is no independent witness, thus, recovery cannot be believed; the P.W.-1 Anjani Kumar Vaishya, P.W.-2 Rishab and P.W.-3 Sunil have not supported the prosecution case before the learned trial court, as such, they have been turned hostile; the co-accused, Mukhtar and Mohd. Zaid have already been released on bail by co-ordinate Bench of this Court and the case of the present applicant is not on the worse footing than that of the co-accused and further considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the case of **Dataram Singh vs. State of UP and another**, reported in (2018) 3 SCC 22, **Kamal (Supra)** and **Takht Singh (Supra)**, this Court is of the view that the applicant may be enlarged on bail.

The prayer for bail is granted. The application is **allowed**.

Let the applicant- **Ateeq** involved in F.I.R./Case Crime No. 218 of 2019, under Sections 394, 307, 302, 120-B I.P.C., Police Station Kotwali Nagar, District Pratapgarh be released on bail on his executing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned on the following conditions :-

- (1) The applicant will not make any attempt to tamper with the prosecution evidence in any manner whatsoever.
- (2) The applicant will personally appear on each and every date fixed in the trial court and his personal presence shall not be exempted unless the court itself deems it fit to do so in the interest of justice.
- (3) The applicant shall cooperate in the trial sincerely without seeking any adjournment.
- (4) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
- (5) In case, the applicant misuses the liberty of bail during trial, 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.
- (6) The applicant shall remain present, 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.
- (7) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad or certified copy issued from the Registry of the High Court, Allahabad.
- (8) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

It may be observed that in the event of any breach of the aforesaid conditions, the trial court shall be at liberty to proceed for the cancellation of applicant's bail.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merits of the case.

Order Date :- 28.8.2024/Saurabh