

Court No. - 7

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5656 of 2023

Applicant :- Durgesh

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

Counsel for Applicant :- Vaibhav Srivastava, Sheo Prakash Singh, Suresh Chandra Srivastava

Counsel for Opposite Party :- G.A., Ramakar Shukla

Hon'ble Saurabh Lavania, J.

1. Heard Mr. Sheo Prakash Singh, learned counsel for the applicant, Mr. Rishabh Pandey, Advocate, holding brief of Mr. Ramakar Shukla, learned counsel for informant/ complainant and Mr. Ravish Chandra Mishra, learned A.G.A. for the State and perused the record.

2. The present bail application has been filed by the applicant seeking bail in Case Crime No. 309 of 2017, under Section-147, 148, 149, 504, 506, 307, 302, 34, 323 & 325 I.P.C. and Section 7 of Criminal Law (Amendment) Act, 1932, Police Station- Baldirai, District- Sultanpur.

3. This is second bail application. First bail application i.e. Criminal Misc. Bail Application No. 2174 of 2019 (Awadesh alias Guddu and Others vs. State of U.P.) was dismissed as not pressed/withdrawn for applicant no.3/Durgesh (present applicant) by this Court vide order dated 22.07.2022

4. While pressing the bail application, learned counsel for the applicant stated that delay in conclusion of trial is also one of the grounds for enlarging the accused on bail and in the instant case trial has not been concluded yet and the applicant is languishing in jail for more than six years. In support of his submissions, learned counsel for the applicant has placed reliance on a judgment of this Court passed in **Criminal Misc. Bail Application No. 2702 of 2022 (Akeel vs. State of U.P.)** dated 25.05.2022.

5. It is further stated that the applicant, having criminal history, is languishing in jail since 05.12.2017 and specific role has not been assigned to the applicant and general role has been assigned to all the accused persons including the present applicant and the conclusion of trial in near future is extremely bleak as out of 31 witnesses, only 6 witnesses have been examined till dated and as such in view of the period of incarceration as also other aspects, the applicant is entitled to be released on bail.

6. In regard to period of incarceration, learned counsel for the applicant has also placed reliance on the judgment passed by the Hon'ble Apex Court in the case of **Union of India Vs. K.A. Najeeb** reported in **AIR 2021 SCC 712** and **Paras Ram Vishnoi. Vs. The Director General Bureau of Investigation**, passed in **Criminal Appeal No.693 of 2021 (Arising out of SLP (Crl.) 3610 of 2020)**, as per which, bail can be granted 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 period of that accused. Relevant para-16 of the case of **K.A. Najeeb (supra)** is quoted 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."

7. In the case of **Paras Ram Vishnoi (supra)**, the Hon'ble Apex Court has observed regarding point of incarceration period and delay in trial. The relevant part of the said judgment is quoted below:-

"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."

8. It is further stated that co-accused namely Verendra, Ram Newaj, Awadesh @ Guddu and Anil @ Arun Kumar have already been granted bail by this Court in; CRIMINAL MISC. BAIL APPLICATION No. 10225 of 2023 vide order dated 15.02.2024; CRIMINAL MISC. BAIL APPLICATION No. 8487 of 2023 vide order dated 16.02.2024, CRIMINAL MISC. BAIL APPLICATION No. 11721 of 2023 vide order dated 12.02.2024; and CRIMINAL MISC. BAIL APPLICATION No. 8499 of 2023 vide order dated 15.02.2024 respectively, and as such, the present applicant is also entitled to be released on bail on the ground of parity. In this regard, applicant's counsel has placed reliance on an order dated 27.04.2023 passed by Hon'ble

9. It is also submitted that there is no apprehension that after being released on bail, the applicant may flee from the course of law or may otherwise misuse the liberty of bail and he will cooperate in trial. The prayer is to grant bail to the applicant. The prayer is to enlarge the applicant on bail.

10. Learned A.G.A. opposed the prayer for grant of bail but he could not dispute the above contentions made by the learned counsel for the accused-applicant particularly the period of incarceration as also settled proposition of law in this regard and the fact that co-accused persons have already been granted bail by this Court.

11. Considering the facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by the learned counsel for the parties and keeping in mind the period of incarceration i.e. more than 6 years as also that co-accused persons have already been granted bail by this Court and also that no specific role has been assigned to the applicant and general role has been assigned to the all the accused persons including the present applicant as also that the applicant has no previous criminal history as also that it appears that the applicant is not in a position to influence the witnesses of the prosecution who have to be examined before the trial court and the judgments, referred above, and without expressing any opinion on the merits of the case, I find it to be a fit case for granting bail.

12. Accordingly, let the applicant- **Durgesh** be released on bail in Case Crime No. 309 of 2017, under Section- 147, 148, 149, 504, 506, 307, 302, 34, 323 & 325 I.P.C. and Section 7 of Criminal Law (Amendment) Act, 1932, Police Station- Baldirai, District- Sultanpur, on his furnishing a personal bond to the satisfaction of the court concerned forthwith. Applicant is also directed to furnish two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

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

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

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

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

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

15. Observations made hereinabove by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 14.3.2024

(Manoj K.)