

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8392 of 2023

Applicant :- Ajay

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

Counsel for Applicant :- Prabhu Sharan,Rajesh Kumar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

On 19-07-2024, the following order was passed in this case :-

"Learned A.G.A. for the State shall apprise this Court with respect to stage of trial.

List/put up this matter in the next week."

In compliance of the order aforesaid, learned A.G.A. has placed before this court, the copy of the instructions dated 24-07-2024 received from Sri Mahendra Singh, Sub. Inspector, Police Station-Asiwan, District-Unnao and the same is taken on record and that shall be the part of the record.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail during the trial in Case Crime No.217 of 2022, under sections 307,323,324,504 of IPC, P.S.-Asiwan, District -Unnao.

Contention of learned counsel for the applicant is that the applicant is innocent and has falsely been implicated in the instant case due to ulterior motive. He submits that the first information report is fabricated and concocted and there is no truthfulness in the allegations levelled against him and he has been shown as main accused due to anonymity. He added that as per the prosecution story, the incident is said to have taken place at 11.30 P.M. in the night and there is no source of light and further the attack is said to have been done when the injured was sleeping and thereafter, he had awoken and therefore, it seems

that he could not see the incident and failed to identify the actual culprits and thus story is after thought. He submits that there are 15 witnesses of the incident, out of them, only two witnesses have been examined as yet, and so far as the deposition of the other witnesses are concerned, that will take a considerable period of time and the applicant is languishing in jail since 03-09-2022.

In support of his contentions, he has placed reliance on the Judgment of the Hon'ble Apex Court reported in **1977 (4) SCC 308, State of Rajasthan, Jaipur Vs. Balchand @ Baliay.**

Referring the aforesaid, he submits that it has been held by the Hon'ble Apex Court that bail is law and the jail is exception and subsequently, the Hon'ble Apex Court has also held that the bail will not be treated as punishment as the fundamental rights as enshrined under Article 21 of the Constitution of India, guarantees the life and liberty of the persons and if a person, waiting for trial for a long period of time, is kept in a jail, the very purpose of formulating of such fundamental rights would be infringed and the aim and object for putting such strong rights for the citizens of the country, would be frustrated.

He has emphasized that there is no previous criminal antecedent of the applicant as is mentioned in paragraph no. 24 of the affidavit filed in support of the bail application and submits that the chargesheet has already been filed and the matter has been proceeded. Further submits that the applicant undertakes that in case, he is granted bail, he will not misuse the liberty of the same and would cooperate in the trial proceedings and would not tamper or threaten the witnesses and therefore, he is entitled for bail.

Per contra, learned AGA appearing for the State has opposed the contentions aforesaid and submitted that there are serious allegations against the applicant and after thorough investigation, it was found that the applicant was involved in committing offence and therefore, the chargesheet has been filed against the applicant. During arguments he has drawn attention of this

court towards the injury report, which corroborates the role of the applicant as the role assigned to the applicant is stabbing with knife and there are incised wounds as per the injury report. Therefore, submission is that the applicant is not entitled for any relief.

Having heard the learned counsels for the parties and after perusal of material placed on record, it transpires that the incident is said to have taken place at 11.30 P.M. in the night and prima-facie, the prosecution has failed to show any source of light so as to identify the applicant. Further applicant has no previous criminal antecedent and he is languishing in jail since 03-09-2022. As per the instructions, which have been placed before this court by the learned counsel for the State, dated 24-07-2024, it transpires that there are 15 witnesses of the incident and out of them, only two witnesses have been examined after passing of period of about 24 months and it seems that this will take much time, in conclusion of the trial.

This court is also not unmindful to the settled proposition of law as well as the intent and scope of the provision of the Article 21 of the Constitution of India. The applicant has also undertaken that if he is granted bail, he will not misuse the liberty of same and would cooperate in the trial proceedings.

Court is also aware regarding the settled law rendered in the cases reported in **2021 (3) SCC 719, Union of India Vs. K.A. Najeeb, (1978) 4 SCC 47, Moti Ram and Others Vs State of Madhya Pradesh, Criminal Appeal No. 2787 of 2024, Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another and Criminal Appeal No. 2790 of 2024, Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of U.P.**

Considering the submissions of learned counsel of both sides, nature of accusation and severity of punishment in case of conviction, nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformatory theory of punishment and considering larger

mandate of the Article 21 of the Constitution of India and, without expressing any view on the merits of the case, I find it to be a fit case of bail.

Let the applicant-**Ajay** involved in the aforementioned crime be released on bail, 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:-

(1) The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, or otherwise during the investigation or trial;

(2) 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. He 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;

(3) 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.; and

(4) 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, the trial court shall initiate proceedings against him, in accordance with law under Section 174-A of the Indian Penal Code.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations made in this order are strictly confined to the disposal of this bail application and must not be construed to have

any reflection on the merits of the case.

Order Date :- 7.8.2024

AKS