

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10003 of 2023

Applicant :- Shamsheer Khan Alias Shamsheer Khan

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

Counsel for Applicant :- Anil Kumar Tiwari, Awanish Kumar Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

1. Heard Sri Awanish Kumar Upadhyay, learned counsel for the applicant and Ms. Ankita Tripathi, learned A.G.A. for the State.
2. This is the Second bail application before this Court, moved on behalf of applicant, Shamsheer Khan Alias Shamsheer Khan, seeking bail in Case Crime No. 306 of 2018 (Session Trial No. 90 of 2019), under Section 302 I.P.C., Police Station Kotwali Nagar, District Sultanpur.
3. The first application for bail was rejected by this Court vide order dated 10.11.2022 passed in Criminal Misc. Bail Application - 4768 of 2019.
4. This Court vide order dated 10.11.2022 rejected the bail application of the accused-applicant-Shamsheer Khan Alias Shamsheer Khan. The order dated 10.11.2022 is being quoted herein-below:

"Pleadings have already been exchanged between the parties and are on the record.

Heard Shri Sukh Deo Singh, the learned counsel for the applicant, Shri Diwakar Singh, the learned A.G.A. for the State and perused the record.

The applicant, Shamsheer Khan @ Shamsheer Khan, has moved the present bail application seeking bail in Case Crime No. 306 of 2018 (Session Trial No. 90 of 2019), under Section 302 I.P.C., Police Station Kotwali Nagar, District Sultanpur.

Learned counsel for the applicant submits that applicant is innocent and has falsely been implicated in the present case. No such incident took place as alleged by the prosecution. The applicant is the elder brother of the husband of the deceased. General allegation for setting on fire the deceased has been made against all the accused persons named in the F.I.R. No specific allegation has been made as to which accused sprinkled kerosene oil upon the deceased or who has put her

on fire. The applicant is in jail since 05.12.2018 with no criminal history. Though the trial has started in the year 2019 but till date only six prosecution witnesses have been examined out of nineteen. All the prosecution witnesses, P.W.1-Hakimunnisha (complainant), P.W.2-Afroz Jahan, P.W.3-Suleman, P.W.4-Irfan Khan, P.W.5-Mohd. Firoz, have been declared hostile by the trial court and only formal witnesses are yet to be examined.

Learned A.G.A. submits that the deceased in her dying declaration has specifically and clearly stated that applicant and his wife after pouring upon her kerosene oil had set her on fire and thereafter closed the door of the room from outside, when the deceased cried her son came there and opened the door, thereafter, she ran away to outside to save her life and one woman of neighbourhood put water on the deceased and extinguished the fire. All the prosecution witnesses have already been examined and only formal witnesses are yet to be examined, and there is chance of early conclusion of trial.

Considering the rival submissions of the parties, the nature of allegations made in the F.I.R., the nature and gravity of the offence, the complicity of accused-applicant and all other facts and circumstances of the case and considering that the deceased in her dying declaration has clearly stated against all the accused including applicant for putting her on fire after pouring kerosene oil upon the deceased, I find no good ground to release the applicant on bail.

In view of the above, the bail application of the applicant is rejected.

The trial court is directed to make its endeavour to conclude the trial expeditiously, if possible, within six months from the date of production of certified copy of this order, without granting any unnecessary adjournments to either of the parties except if there is any order of the Higher Court staying the proceedings of case.

Let a copy of this order be sent to the court below for necessary compliance."

5. This Court vide order dated 03.05.2024 had passed the following order:

"This is the second bail application filed by the applicant.

The First bail application was rejected by this Court vide order dated 10.11.2022 on merit passed in Criminal Misc. Bail Application No. 4768 of 2019.

This case has been nominated to this Bench by Hon'ble The Chief Justice vide order dated 01.05.2024 and is listed today.

Learned A.G.A. for the State has already filed the counter affidavit on 01.11.2023, which is on record.

Learned counsel for the applicant prays for and is allowed two week's and no more time to file rejoinder affidavit. Learned counsel for the applicant is also directed to file latest status of trial, pending before the trial Court.

List this case on 30.05.2024. "

6. In compliance of the order dated 03.05.2024, learned counsel for the applicant has not filed the latest status of the trial, pending before the trial court and submits that out of 18 witnesses 08 witnesses have been examined.

7. Ms. Ankita Tripathi, learned A.G.A. for the State submits that all the important witnesses have been examined and only formal witnesses are left to be examined. She further submits that the crime is heinous in nature and the deceased in her dying declaration has clearly stated against all the accused including the applicant for putting her on fire after pouring kerosene oil upon the deceased.

8. Considering the above facts and submissions as advanced by the learned counsel for the parties, this court is of the view that the crime is heinous in nature and the deceased in her dying declaration has clearly stated against all the accused including the applicant for putting her on fire after pouring kerosene oil upon the deceased. The first bail application of the applicant was rejected by this Court vide a detailed order vide dated 10.11.2022 passed in Criminal Misc. Bail Application - 4768 of 2019 and in this second bail application the applicant has not taken any fresh ground or any other ground for interference, nor the learned counsel for the applicant is able to justify non involvement of the applicant in commission of crime, thus in absence of any new ground, this Court does not find any justification to enlarge the the applicant on bail.

9. Accordingly, the present second bail application of the applicant is hereby **rejected**.

10. Learned counsel for the applicant submits that vide order dated 10.11.2022, the trial court was directed to expedite the trial within six months, but till today the trial is pending.

11. Ms. learned A.G.A. for the State submits that due to heavy pendency before the trial court, the trial court could not conclude the trial as directed by this Hon'ble Court vide order dated 10.11.2022 and prays that some further time be given to the trial court to conclude the trial.

12. However, being a peculiar case, the trial court is directed to expedite and conclude the trial of the above case without fail within six months from the date of production of certified copy of this order, without granting any unnecessary adjournments to either of the parties, unless there is any legal impediment or stay of proceedings by Higher Court.

Order Date :- 15.7.2024

Arvind