

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10684 of 2023

Applicant :- Ravesh Alias Basiti

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

Counsel for Applicant :- Arunendra Nath Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard.

2. This Court has passed order dated 25.04.2024, which reads as under:-

"1. Heard learned counsel for the applicant and learned AGA for the State.

2. As per learned counsel for the applicant, the present applicant is in jail since 05.03.2016 in S.T. No.223 of 2016, Case Crime No.14 of 2015, under Sections 302 & 120-B of IPC, Police Station- Atrauli, District-Hardoi.

3. I have perused the letter dated 01.04.2024 preferred by the learned trial court addressing to the Deputy Registrar (Criminal Bail) of this Court through District & Sessions Judge, Hardoi wherein it has been indicated in para-4 that the C.D.R., which was called from the Service Provider Agency, has not been provided the appropriate C.D.R., therefore, the subsequent order dated 28.03.2024 has been passed to summon the appropriate/ correct C.D.R. through Superintendent of Police, Hardoi but that C.D.R. has not been received till date.

4. Let Superintendent of Police, Hardoi apprise this Court as to whether the appropriate copy of C.D.R. has been provided to the learned trial court or not.

5. Let copy of this order be provided to the Superintendent of Police, Hardoi by the Registry of this Court within three working days so that the Superintendent of Police, Hardoi could provide the correct instructions to this Court by the next date of listing.

6. List on 07.05.2024 within top ten cases.

7. On that date, report from the Superintendent of Police, Hardoi shall be provided to this Court through the learned AGA.

8. Learned AGA shall also intimate this order to the Superintendent of Police, Hardoi within three working days telephonically/ e-mail/ any other

convenient mode for its compliance."

3. The Deputy Registrar of this Court has shown copy of a letter dated 29.04.2024 addressing to the Superintendent of Police, Hardoi apprising the order of this Court on 27.04.2024 but no information in compliance of the aforesaid order has been provided to the Court.

4. Learned AGA has also shown a copy of letter dated 26.04.2024 preferred to the Superintendent of Police, Hardoi intimating the order of this Court but no response has been received by the learned AGA till date.

5. Therefore, it appears that the Superintendent of Police, Hardoi is not interested to make compliance of the order of this Court, resultant thereof, this Court is considering the bail application and the accused is being granted bail in absence of proper cooperation being extended by the Superintendent of Police, Hardoi.

6. This is the sixth bail application. Learned counsel for the applicant has stated that he shall not address the Court on the points, which have already been addressed to the Court at the time of disposal of earlier five bail applications but he shall address only those grounds, which may be considered as fresh/new grounds to consider sixth bail application. This Court while rejecting the first bail application bearing Bail No.4794 of 2016 vide order dated 14.06.2016 observed as under:-

"Heard Sri B.P. Nigam, learned counsel for the applicant, Sri Diwakar Singh, learned A.G.A. for the State and perused the record.

It has been submitted by learned counsel for the applicant that the F.I.R. was lodged by one Ajay @ Bugge Nat, who was subsequently made an accused in the present case but he has been granted bail by another Bench of this Court. He submitted that the naming of the applicant in the present case is after thought. The applicant is in jail since 5.3.2016.

Learned AGA opposed the prayer for bail and submitted that the present matter has taken place in well planned manner and the applicant is the main shooter.

Without expressing any opinion on the merits of the case and considering the submissions advanced, I find that no good ground is made out for enlarging the applicant on bail.

The bail application of the applicant Ravesh @ Basitti, involved in Case Crime no.14 of 2015, under Section 302, 120-B I.P.C., P.S. Atrauli, District Hardoi is, accordingly, rejected.

However, the trial court is directed to expedite the trial and conclude the same preferably within the period of six months from the date of

production of a certified copy of this order before the trial court, if there is no legal impediment."

7. This Court has passed order dated 02.05.2018 rejecting the second bail application of the applicant bearing Bail No.7099 of 2016, which reads as under:-

"This is the second bail application moved on behalf of the applicant, namely, Ravesh @ Basitti, involved in case crime no.14/2015 under Sections 302 and 120-B I.P.C., Police Station- Atrauli, District- Hardoi.

Heard learned Counsel for the applicant and learned A.G.A. for the State.

Learned Counsel for the applicant has submitted that earlier the First Information Report was lodged under Section 307 I.P.C. against four accused, namely, Digvijay Nat, Jay Pal Nat, Ram Kumar Nat and Mool Chandra Nat. Further, brother of the deceased moved an application under Section 156(3) with malicious intention alleging the applicant to open fire which hit the deceased.

Learned A.G.A. has vehemently opposed the prayer for bail.

Perused the First Information Report and other relevant papers filed in support of the application.

Considering all the relevant aspects of the matter and the fact that the applicant has been assigned main role of firing, I am not inclined to release the applicant on bail. The application for bail is hereby rejected.

However, the trial court is directed to expedite the trial and conclude the same, if possible, within the period of three months from the date of production of certified copy of this order before the trial court, if the trial already not concluded.

Office is directed to send the certified copy of this order to the trial court for its compliance."

8. Third bail application has been rejected by this Court vide order dated 08.03.2021 passed in Bail No.8085 of 2018, which reads as under:-

"1. The case is taken up in the revised list.

2. None is present on behalf of the accused applicant.

3. The application is rejected for want of prosecution."

9. Fourth bail application has been rejected by this Court vide order dated 09.05.2022 passed in Criminal Misc. Bail Application No.4883 of 2021, which reads as under:-

"1. This is fourth bail application.

2. This bail application under Section 439 Cr.P.C. has been filed seeking

bail in Case Crime No.14 of 2015, under Sections 302, 120B IPC, Police Station Mohd-pur Khala, District Barabanki.

3. This Court called for a report regarding progress and status of trial. As per the reports submitted by the trial Court dated 18.04.2022, the defence has examined one Ajay Kumar @ Bugge. On 22.02.2022 an application was moved on behalf of the accused under Section 311 Cr.P.C. for reexamination of the prosecution witness. It has been stated in the report that after hearing the parties, next date was fixed on 26.04.2022 for order on the said application. From the aforesaid report, it is evident that the accused are not allowing the trial to proceed expeditiously and they are delaying the trial deliberately by moving application i.e. application under Section 311 Cr.P.C. to reexamine the prosecution witnesses.

4. In view of the aforesaid, this Court does not find that it is a fit case where the accused-applicant can be enlarged on bail when trial is almost complete. This bail application is thus, rejected. However, considering the fact that the accused-applicant is in jail since 05.03.2016, trial Court is directed to conclude the trial expeditiously and pronounce the judgment within a period of 6 months from today.

5. Let a copy of this order be forwarded to the concerned trial Court expeditiously and pronounce the judgment within a period of 6 months from today."

10. Fifth bail application has been rejected by this Court vide order dated 22.03.2023 passed in Criminal Misc. Bail Application No.392 of 2023, which reads as under:-

"Heard Shri Arunendra Nath Mishra, learned Counsel for the applicant and Shri Ashwani Kumar Singh, learned A.G.A.

This bail application under Section 439 Cr.P.C. has been filed seeking bail in Case Crime No.14 of 2015 under Sections 302, 120-B, I.P.C., Police Station-Mohd-pur Khala, District-Barabanki.

This is the fifth bail application. The first bail application was rejected by the Co-ordinate Bench of this Court vide order dated 14.06.2016 passed in Bail No.4794 of 2016, the second bail application was rejected by the Co-ordinate Bench of this Court vide order dated 02.05.2018 passed in Bail No.7099 of 2018, the third bail application was rejected by the Co-ordinate Bench of this Court vide order dated 08.03.2021 passed in Bail No.8085 of 2018 and the fourth bail application of the accused-applicant has also been rejected by this Court vide order dated 09.05.2022 passed in Criminal Misc. Bail Application No.4883 of 2021. The said order rejecting the fourth bail application of the accused applicant reads as under:-

"1.This is fourth bail application.

2. This bail application under Section 439 Cr.P.C. has been filed seeking bail in Case Crime No.14 of 2015, under Sections 302, 120B IPC, Police Station Mohd-pur Khala, District Barabanki.

3. This Court called for a report regarding progress and status of trial. As per the reports submitted by the trial Court dated 18.04.2022, the defence

has examined one Ajay Kumar @ Bugge. On 22.02.2022 an application was moved on behalf of the accused under Section 311 Cr.P.C. for reexamination of the prosecution witness. It has been stated in the report that after hearing the parties, next date was fixed on 26.04.2022 for order on the said application. From the aforesaid report, it is evident that the accused are not allowing the trial to proceed expeditiously and they are delaying the trial deliberately by moving application i.e. application under Section 311 Cr.P.C. to reexamine the prosecution witnesses.

4. In view of the aforesaid, this Court does not find that it is a fit case where the accused-applicant can be enlarged on bail when trial is almost complete. This bail application is thus, rejected. However, considering the fact that the accused-applicant is in jail since 05.03.2016, trial Court is directed to conclude the trial expeditiously and pronounce the judgment within a period of 6 months from today.

5. Let a copy of this order be forwarded to the concerned trial Court expeditiously and pronounce the judgment within a period of 6 months from today."

As per the report of the trial court, two defence witnesses have been examined and for further evidence of defence witnesses next date is fixed on 03.04.2023. The trial court has progressed well.

At this stage, this Court does not find it fit case to enlarge/release the accused-applicant on bail.

However, the trial court should make endeavour to close the defence evidence on the said date fixed and proceed for arguments and pronouncement of judgment within a period of three months from today.

With the aforesaid observations, the present fifth bail application is hereby rejected.

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

11. Notably, in all the bail rejection orders, right from 14.06.2016 till 22.03.2023, direction has been issued to expedite the trial fixing specific time to conclude the trial.

12. Learned counsel for the applicant has stated that the present applicant is in jail since 05.03.2016 in S.T. No.223 of 2016, Case Crime No.14 of 2015, under Sections 302 & 120B of IPC, Police Station – Atrauli, District – Hardoi.

13. Learned counsel for the applicant has further submitted that after recording the statements of all the prosecution witnesses, the mandatory exercise under Section 313 Cr.P.C. has been completed; some defence witnesses are yet to be examined but in the meantime, CDR was called by the learned trial court but the correct CDR has not been produced before the court, resultant thereof, trial could not be concluded. Learned counsel has submitted that the CDR in question would be received from

Chandigarh but no proper efforts have been taken by the local police to summon such CDR. Learned counsel for the applicant has submitted that the present applicant is in jail for more than eight years, therefore, in view of the judgments of the Apex Court in re; **Union of India vs. K.A. Najeeb**, AIR 2021 Supreme Court 712, long period of incarceration may be considered as a fresh ground. Learned counsel for the applicant has further submitted that the applicant undertakes that he shall co-operate in the trial proceedings and shall not misuse the liberty of bail, if so granted by this Court. Further, the applicant shall abide by all terms and conditions of the bail order.

14. It would not be out of place to indicate here that despite the specific order being passed by this Court on 25.04.2024 (supra) and copy thereof being served upon the Superintendent of Police, Hardoi, as noted above, no proper response has been provided to this Court. Therefore, it appears that the trial is being delayed on account of lapse on the part of the prosecution.

15. Learned AGA has submitted that though the trial in question is at the verge of conclusion but unless and until the appropriate CDR is not produced before the learned trial court, the trial court would not be able to conclude the trial. Learned AGA has further submitted that this is the case where five bail applications of the present applicant have been rejected for the reason that the present applicant was absconding for quite long time. He has further submitted that in case the trial is concluded and the learned trial court finds that the present applicant should be imposed punishment, to ensure his presence would be the difficult task keeping in view the past track record of the present applicant.

16. Having considered the arguments of learned counsel for the parties; without entering into merits of the issue; considering the fact that more than eight years' period has passed since the present applicant is in jail/ judicial custody; by means of earlier orders being passed by this Court directing the learned trial court to conclude the trial within time frame but the trial has not been concluded till date; despite the specific direction being issued by this Court to the Superintendent of Police, Hardoi to apprise the Court about the fact as to whether appropriate copy of CDR has been provided to the learned trial court or not but no such information has been provided to this Court despite such information was provided to the Superintendent of Police, Hardoi; judgment of the Apex Court in re; **K.A. Najeeb** (supra) and undertaking of the applicant that he shall cooperate in the trial proceedings and shall not misuse the liberty of bail, I find it appropriate to release the applicant on bail.

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

18. Let applicant- Ravesh alias Basiti be released on bail in S.T. No.223 of 2016, Case Crime No.14 of 2015, under Sections 302 & 120B of IPC, Police Station – Atrauli, District – Hardoi on his furnishing a personal bond of Rupees two lakh fifty thousand and two sureties of Rupees two lakh fifty thousand each before 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.

19. Before parting with, learned trial court is directed to conduct and conclude the trial with expedition and no unnecessary adjournment shall be given to any of the parties.

[Rajesh Singh Chauhan,J.]

Order Date :- 7.5.2024

RBS/-