

Court No. - 12

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11217 of 2024

Applicant :- Raj Kumar

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

Counsel for Applicant :- Jai Kishan Arora, Ashish Kumar, Jaydeep, Lalita Nishad, Shailendra Vikram Singh

Counsel for Opposite Party :- G.A., Vinay Kumar Dubey, Vishal Kumar Yadav

Hon'ble Saurabh Lavania, J.

1. Case called out. No one appeared on behalf of the complainant to oppose the present application despite names of Shri Vinay Kumar Dubey and Shri Vishal Kumar Yadav, Advocate(s) have been printed as counsel for the complainant in the cause list.

2. Learned counsel for the petitioner and learned AGA for the State are present.

3. Learned counsel for the petitioner stated that Shri Vishal Kumar Yadav, Advocate was informed regarding the listing of this case through WhatsApp.

4. The proof of service has been placed before this Court, which is taken on record.

5. At this stage, Ms. Aziza Khan, Advocate holding brief of Shri Vinay Kumar Dubey, Advocate, appeared and prayed to adjourn the case for the day.

6. Taking note of the aforesaid as also the earlier order(s) dated 05.12.2024 and 18.12.2024 passed by this Court, this Court proceeded to hear the application finally on merits.

7. Heard Ms. Lalita Nishad,, learned counsel for the applicant as well

as Shri Ajay Kumar Srivastava, learned AGA for the State-opposite party.

8. The present bail application has been filed by the applicant seeking bail in Case Crime No. 216 of 2021, under Sections 147/148/149/302/323 IPC, Police Station- Nigohan, District Lucknow.

9. While pressing the present bail application, it is stated that in the FIR, Case Crime No. 216 dated 05.08.2021, lodged at Police Station - Nigohan, District - Lucknow under Sections 147/148/149/302/323 IPC, the basis of pending criminal proceedings before the trial Court, the allegations have been levelled against Raj Kumar, Nilesh, Pawan, Aman and Prema Devi.

10. It is stated that according to this FIR, the applicant was armed with 'Axe' and Nilesh was armed with 'Banka'.

11. It is also stated that the deceased, according to the post-mortem report, sustained injuries, which could be caused by a sharp edged weapon including 'Axe' or 'Banka'.

12. It is also stated that in the incident occurred on 05.08.2021 other persons namely Pintoo, Kamla Devi also sustained injuries, which could be caused, as per opinion of the doctor concerned, by a hard and blunt object.

13. It is also stated that said injured witnesses in their statement(s) made before the Investigating officer stated that Raj Kumar and Nilesh assaulted the deceased with 'Axe' and 'Banka', respectively, and Prema Devi, Pawan and Aman assaulted the deceased with lathi and danda.

14. It is also stated that co-accused Nilesh, as per story of prosecution, was armed with axe and assaulted the deceased, has already been enlarged on bail by this Court vide order dated **15.07.2024 passed in**

BAIL No. 10341 of 2023.

15. It is further stated that co-accused Pawan has also been released on bail vide order datd **16.02.2023 passed in BAIL No. 2428 of 2023.**

16. It is also stated that the applicant is in jail since 06.08.2021. Thus, period of incarceration of the applicant is also about three and half years and in view of law laid down by Hon'ble Supreme Court in the case of **Union of India Vs. K.A. Najeel 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)**, the bail can be granted to the accused persons on the ground that there is no possibility to conclusion of the trial in near future and there is a long incarceration period of the accused.

17. It is also stated that six witnesses have already been examined before the trial Court, out of total twenty six witnesses who have to be examined as per the charge-sheet and this fact can be deduced from a copy of questionnaire annexed as page 54 of the application. In this view of the matter the possibility of conclusion of trial in near future is extremely bleak.

18. Shri Ajay Kumar Srivastava, learned A.G.A. for the State opposed the prayer for grant of bail and stated that the witnesses who have already been examined have supported the story of prosecution as such the applicant is not entitled to be released on bail. However, he also could not dispute the aforesaid particularly period of incarceration and the chances of conclusion of trial in near future, which appears to be bleak, and that the applicant has no criminal history, as indicated in the order dated 21.08.2024 of the trial Court.

19. Considered the aforesaid and perusal of the record.

20. Considering the rival submissions of learned counsel for parties,

material available on record and period of incarceration i.e. about three and a half years as also the chances of conclusion of trial in near future and the submission of counsel for the applicant to the effect that while on bail in this case, the applicant would not commit any crime/offense nor he would try to tamper the evidence or influence the witnesses in any manner whatsoever it may be and without expressing any opinion on the merits of the case, this Court finds force in the argument of the learned counsel for the applicant and is of the view that the applicant is entitled to be released on bail. Order accordingly.

21. Let applicant- **Raj Kumar**, be released on bail in aforesaid Case Crime, on his furnishing 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:-

(1) Applicant will not try to influence the witnesses or tamper with the evidence of the case or otherwise misuse the liberty of bail.

(2) Applicant will fully cooperate in expeditious disposal of the case and shall not seek any adjournment on the dates fixed for evidence when witnesses are present in the Court.

(3) Applicant shall remain present, in person, before the trial court on the dates fixed for recording of statement under Section 313 Cr.P.C.

(4) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(5) The computer generated copy of such order shall be self attested by the counsel of the party concerned.

(6) 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.

22. Any violation of above conditions will be treated misuse of bail and learned Court below will be at liberty to pass appropriate order in the matter regarding cancellation of bail.

Order Date :- 20.12.2024

Mohit Singh/-