

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11805 of 2024

Applicant :- Rajesh @ Patela

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

Counsel for Applicant :- Shubham Chaurasiya, Mohd Hatim, Nitin Kumar Mishra, Shivanshu Rao, Virendra Vikram Singh

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh, J.

Counter Affidavit filed today on behalf of the State is taken on record.

Heard Sri Shubham Chaurasiya, learned counsel for the applicant, learned A.G.A. for the State and perused the 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. 991 of 2017, under sections 395/397/412 of the I.P.C., Police Station-Kotwali Nagar, District -Barabanki.

Contention of learned counsel for the applicant is that the applicant is innocent and has falsely been implicated in the instant matter due to ulterior motive. He added that the police has connected the applicant in the present case including the other criminal offences on the basis of suspicion, though, he was never involved in the same. He has also shown the other falsity in the story of the prosecution and submitted that the applicant has explained 20 cases criminal history and he is languishing in jail since 03-02-2018 and there is no possibility that in future, the trial would be concluded. Further submitted 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.

In support of his contentions, learned counsel for the applicant has relied upon the Judgment of the Hon'ble Apex Court in the case reported in **2021(3) SCC 713, Union of India Vs. K.A. Najeer**. Para 15 of the Judgment of the said Judgment is reproduced hereinunder :-

"15. 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."

He has further relied upon the Judgment of the Hon'ble Apex Court in the case of **Manish Sisodia vs Directorate of Enforcement in SLP (Criminal) No. 8781 of 2024**. Para nos. 53 & 54 of the said Judgment are quoted hereinunder:-

"53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial."

Referring the aforesaid, he submits that the case of the present applicant is squarely covered with the ratio of the judgments abovesaid.

Per contra, learned AGA appearing for the State has opposed the contentions aforesaid and submits that the applicant is involved in committing offence and there are as many as 20 cases criminal history of the applicant and as such, he is not entitled for any relief.

Having heard learned counsels for the parties and after perusal of material placed on record, it transpires that the applicant is languishing in jail since 03-02-2018; twenty cases criminal history of the applicant has been explained coupled with the fact that the applicant has undertaken that if he is granted bail, he will not misuse the liberty of the same and would cooperate in the trial proceedings.

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-**Rajesh @ Patela**, 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 :- 27.11.2024

AKS