

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5797 of 2024

Applicant :- Arvind Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Dinesh Kumar Singh, Indresh Kumar Singh, Mohit Behari Mathur

Counsel for Opposite Party :- G.A., Mayank Krishna S Chandel, Vinod Kumar Chandel

Hon'ble Siddharth, J.

Heard Sri Mohit Behari Mathur, learned counsel for the applicant; Sri Mayank Krishna S. Chandel, learned counsel for the informant and learned A.G.A for the State.

The instant bail application has been filed on behalf of the applicant, Arvind Singh, with a prayer to release him on bail in **Case Crime No. 256/2023, under Sections 147, 148, 149, 307, 302, 120-B of IPC and section 7 of Cr. Law Amendment Act, Police Station- Sarai Lakhansi, District- Mau**, during pendency of trial.

There are allegations in the F.I.R. that informant, Santosh Singh, has two more brothers. Wife of co-villager, Arvind Singh, namely, Sangeeta Singh, is village *pradhan* and Arvind Singh, applicant is a criminal and *mafiya* and has got murder of two persons of his family committed. He was involved in getting public work done by force and fraud and whenever the informant opposed him, he got annoyed. In order to remove the informant from the way, Arvind Singh, his brother, Anil Singh and wife hatched conspiracy and all the accused persons armed with weapons attacked the informant alongwith his brother, Abhimanyu Singh and caused indiscriminate firing on them. While Abhimanyu Singh, suffered injuries and died in the hospital, the informant escaped. He took his brother on motorcycle to the hospital with the help of the people around.

Learned counsel for the applicant has submitted that in the statement of the informant, specific role of causing gun shot injury to the deceased has been assigned to co-accused, Sooraj Singh @ Golu, Anil Singh and Akhand Pratap Singh, but not the applicant.

Only two gun shot entry wounds were found on the body of the deceased when the assailants were stated to be three in numbers. Regarding the reference to earlier F.I.R., and enmity between the parties a Sessions Trial proceeded and ended in acquittal. The applicant has been falsely implicated in this case on the account of political rivalry and because of being husband of the *pradhan* of the village. Planted recovery of 9 m.m. pistol has been shown from the applicant. Female co-accused have already been enlarged on bail. The applicant has criminal history two cases under the Arms Act and one case under Gangsters Act. He and is languishing in jail since 25.07.2023. The trial in the aforesaid case is not likely to be concluded in near future.

Learned A.G.A. and learned counsel for informant have vehemently opposed the prayer for bail of the applicant and have placed before this Court the bail rejection order of co-accused, Anil Singh, passed by coordinate Bench of this Court in Criminal Misc. Bail Application No. 23091 of 2024 and have submitted that the applicant is not entitled to bail on this account. In case the applicant is released on bail, he will again indulge in similar activities and will misuse the liberty of bail.

After hearing the learned counsel for the parties, this Court finds that the role of firing on the deceased has been assigned to co-accused, Sooraj Singh and Akhand Pratap Singh and not to the applicant, who has been implicated in this case with the help of of section 149 IPC. Ingredients of section 149 IPC are required to be proved before the trial court. Keeping in view the requirements of section 141 IPC unless the prosecution proves that it was unlawful assembly before the trial court as per section 141 IPC conviction cannot be ordered under section 149 IPC. At this stage of bail application, the implication is made by the investigating officer as per his choice under difference penal sections and the court cannot be compelled to except the same as final.

Regarding long incarceration of under trials prisoners in jail due to delay in conclusion of trial, the Hon'ble Apex Court in re: ***Union of India vs. K.A. Najeer reported in AIR 2021 Supreme Court 712*** has held in Para 16 of the judgment being reproduced herein below as follows :-

"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."

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant, keeping in view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India, considering the paragraph no.53 of Apex Court in the case of **Manish Sisodia Vs. Directorate of Enforcement 2024, (SC) LawSuit 677** and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid 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 that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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.

(v) 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.

In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 26.5.2025

Abhishek