

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 23426 of 2020

Applicant :- Jai Prakash Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Sameer Jain

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard learned counsel for applicant and learned A.G.A. for State.
2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Jai Prakash Yadav, seeking enlargement on bail during trial in connection with Case Crime No. 505 of 2019, under Sections 147, 148, 323, 308, 304, 504 IPC, Police Station Chaubeypur, District Varanasi.
3. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. Allegations made against applicant are totally false and baseless. Applicant neither participated in the crime nor caused any injury to deceased or injured. There is no recovery either from the pointing out of applicant or from his possession. Learned counsel for applicant has also placed on record orders dated 18.06.2020 and 27.08.2020 passed in Criminal Misc. Bail Applications No. 11855 of 2020 and 20212 of 2002, respectively, whereby two co-accused, have been granted bail by this Court and applicant seeks parity. Lastly he submits that applicant has no criminal history and he is languishing in jail since 04.12.2019 and in case, he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.
4. Learned A.G.A. appearing for State has opposed the bail application relying on the contents of FIR and states that parity cannot be a sole ground for granting bail. However, he has not disputed the order referred above.
5. Law on bail is well settled that 'Bail is rule and jail is exception'. Bail should not be granted or rejected in a mechanical manner as it concerns the liberty of a person .At the time of considering an application for bail, the Court must take into account certain factors such as the existence of a prima facie case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the

possibility of tampering with the witnesses and obstructing the Courts as well as the criminal antecedents of the accused. It is also well settled that the Court while considering an application for bail must not go into deep into merits of the matter such as question of credibility and reliability of prosecution witnesses which can only be tested during the trial. Even ground of parity is one of the above mentioned aspects which are essentially required to be considered while considering application for bail. It is also well settled that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner, compassionately and not in whimsical manner. Conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

6. After perusing the record in the light of submissions made at the Bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also the absence of any convincing material to indicate the possibility of tampering with the evidence, bail to similarly situated co-accused, no specific role, no recovery and pending civil case of land dispute, this Court is of the view that the applicant may be enlarged on bail.

7. Let applicant-Jai Prakash Yadav be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions which are being imposed in the interest of justice:-

- i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.
- ii) The applicant will abide the orders of Court, will attend the Court on every date and will not delay the disposal of trial in any manner whatsoever.
- iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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., may be issued and if 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 I.P.C.

v) The applicant shall remain present, in person, before Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of Trial Court absence of applicant is deliberate or without sufficient cause, then it shall be open for Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and Trial Court may proceed against him under Section 229-A IPC.

vi) The Trial Court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of applicant.

8. The identity, status and residential proof of sureties will be verified by Court concerned and in case of breach of any of the conditions mentioned above, Court concerned will be at liberty to cancel the bail and send the applicant to prison.

9. The bail application is allowed.

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

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

Order Date :- 31.8.2020

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