

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3800 of 2024

Applicant :- Mohd. Hasnain

Opposite Party :- State Of U.P. Thru. Its Addl. Chief Secy. Deptt. Of Home, Lucknow

Counsel for Applicant :- Ravi Singh, Mohd. Jabir, Pranjal Krishna, Suhaib Ashraf

Counsel for Opposite Party :- G.A.

Hon'ble Karunesh Singh Pawar, J.

Heard Shri Pranjal Krishna, learned counsel for the applicant and learned A.G.A for the respondent State.

This is the second bail application. The first bail application of the applicant was rejected vide order dated 17.01.2024 passed by this Court in Criminal Misc. Bail Application No. 15322 of 2023.

Learned counsel for the applicant while pressing the present second bail application on fresh grounds submits that the FIR was registered on 22.11.2023; first bail application of the applicant was rejected vide order dated 17.01.2024; charge sheet was filed on 23.02.2024; after the status report was called by this Court, charges were framed on 07.08.2024, however, till date only PW-1 could be examined. The applicant is languishing in jail since 22.11.2023 without any fault of his own.

Learned counsel for the applicant submits that first bail application was rejected on the ground that apart from the criminal history of other cases, the applicant has a criminal history of two cases under NDPS Act and therefore, the

satisfaction with regard to section 37 of NDPS Act could not be recorded to the extent that he will not commit the same offence in future.

It has been further submitted that so far as criminal history of two cases of NDPS is concerned, in one case crime No. 746/2011, under Section 8/21 of NDPS Act, P.S. Badosarari, District Barabanki, the applicant has been acquitted and in the second case i.e. case crime No. 305/2022, under Section 8/21 of NDPS Act, which was registered in the year 2022, although, the applicant is on bail, however, still, after expiry of two and half years, even the trial has not commenced.

It has been further submitted that the delay in trial is on the part of the prosecution. The applicant cannot be put to suffer for this delay and therefore, with regard to the conditions under Section 37(1)(b)(ii) of NDPS Act will not come in the way of consideration of the application of the applicant for grant of bail. In support of his argument, he has relied on the judgment of the Hon'ble Supreme Court passed in the case of "**Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC 1109**". Emphasis is on paragraphs 3 and 4.

Learned counsel for the applicant further submits that the Apex Court in the case of Rabi Prakash (supra) after considering the long period of incarceration has held that "*prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo*

created under Section 37(1)(b)(ii) of the NDPS Act" and therefore, in this case also, the applicant is liable to be granted bail.

It has been further submitted on behalf of the applicant that co-accused persons namely Mohd. Yusuf and Nurul Hasan have been granted bail by the learned Additional District and Sessions Judge (NDSP Act), Barabanki. The bail orders are on record as Annexure No. 7 collectively to the bail application. Likewise, another co-accused namely Mohd. Rashid has also been granted bail by the coordinate Bench of this Court vide order dated 11.01.2024 passed in Criminal Misc. Bail Application No. 344 of 2024.

Learned counsel for the applicant further submits that on the basis of criminal history of NDPS cases as well as in the case crime No. 305/2022, the fundamental rights guaranteed under Article 21 of the Constitution cannot be ignored and they shall not be affected by Section 37 of NDPS Act as held by the Apex Court in the judgment of ***Rabi Prakash (supra)***.

It has been further submitted on behalf of the applicant that since number of named accused persons have been granted bail, therefore, the applicant should be granted parity. In support of his contention, he has relied on the judgment of the Apex Court passed in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another, (2022) 10 SCC 51.**

Perused the record.

The Apex Court in the case of Rabi Prakash (supra) while considering the prolonged incarceration vis-a-vis

conditions under Section 37(1)(b)(ii) of the NDPS Act has held as under:-

"3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

In this case, the applicant is languishing in jail since 22.11.2023 and till date only single witness has been examined that too when status of trial was summoned by this Court. So far as case crime No. 746/2011, under Section 8/21 of NDPS Act is concerned, the applicant has been acquitted. In case crime No. 305/2022, under Section 8/21 of NDPS Act this Court has noticed that approximately one and half years have passed, however, till date trial has not commenced. Criminal history of those cases, in view of the Judgment of the Apex Court in the case of Rabi Prakash (supra), cannot come in the way of consideration of the application of the applicant for grant of bail and stringent condition under Section 37(1)(b)(ii) NDPS Act should not be given weightage over the fundamental rights guaranteed to the accused under Article 21 of the Constitution of India.

Perusal of the record further shows that three similarly situated co-accused persons have been granted bail. The Apex Court in the case of Satender Kumar Antil (supra) (paragraph 98) has held as under:-

"98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India."

In view of the law laid down by the Apex Court in the case of Rabi Prakash (supra), the twin condition under Section 37(1)(b)(ii) of the NDPS Act cannot come in the way of fundamental rights guaranteed to the accused under Article 21 of the Constitution of India considering his long incarceration and slow progress of the trial. Likewise, as held by the Apex Court in the case of Satender Kumar Antil (supra), since three co-accused persons have been granted bail by this case, the applicant cannot be treated differently.

In view of the discussions made herein above, the bail application of the applicant is **allowed**.

Let the applicant, Mohd. Hasnain, involved in Case Crime/FIR No. 478/2023, under Sections 8/21C/29/60(3) of NDPS Act, Police Station - Jaidpur, District - Barabanki, 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 which are being imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence during the trial.

- (ii) The applicant will not pressurize/ intimidate the prosecution witness.
- (iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.
- (iv) 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.
- (v) 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.
- (vi) 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.

Order Date :- 12.12.2024
R.C.