

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24569 of 2023

Applicant :- Madan Gopal@ Madan Gopal Gaur

Opposite Party :- State of U.P.

Counsel for Applicant :- Birendra Singh, Yash Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan, J.

1. Heard Mr. S.F.A. Naqvi, learned Senior Counsel assisted by Sri Yash Pratap Singh, learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. Supplementary affidavit filed today is taken on record annexing the ordersheet of the court below.

3. This is the second bail application filed by the applicant. The first bail application was rejected by this Court by order dated 2.1.2023.

4. A perusal of the ordersheet would go to show that since 13.9.2022 the applicant is regularly appearing before the trial court. However, till date charge has not been framed and general dates are being fixed.

5. Learned counsel for the applicant has relied upon the judgment passed by Apex Court in **R.D. Upadhyay Vs. State of A.P. and others, 1996 (3) SCC 422**. As per learned counsel for the applicant the applicant is aged about 59 years.

6. It is submitted by learned counsel for the applicant that the trial is not proceedings in the matter and the applicant is entitled to be enlarged on bail in view of the judgment passed by the Apex Court in **R.D. Upadhyaym (supra)**.

7. Learned A.G.A. does not dispute the factual matrix of the case as well as the judgment of the Apex Court in the case of **R.D. Upadhyay (supra)**.

8. It is to be seen that the applicant is in jail for more than one year. The first bail application of the applicant was rejected on

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2.1.2023. The applicant has no criminal history and is languishing in jail since 14.9.2022.

9. A perusal of the ordersheet of the trial court would demonstrate that the applicant is regularly appearing before the trial court. However, till date no charge has been framed and general dates regarding presence of the applicant is being given. It is the duty of the prosecution to prosecute the accused person at the earliest. The delay defeat justice. The Apex Court in the case of **R.D. Upadhyay (supra)** has directed release on bail of the accused person who are charged with cheating after detention of more than one year. In this respect, paragraph 3 of the aforesaid judgment is quoted hereunder:-

"3. So far as the cases regarding attempt of murder are concerned, we direct that the cases which are pending for more than 2 years, the undertrials shall be released on bail forthwith to the satisfaction of the respective trial courts. Persons facing trial for Kidnapping, Theft, Cheating, Arms Act, Counterfeiting, Customs, under Section 326 I.P.C., under Section 324 I.P.C., Riots and under Section 354 I.P.C. who are in jail for a period of more than one year, shall be released on bail forthwith to the satisfaction of the trial courts concerned. There may be cases where the undertrial persons may not be in a position to furnish sureties etc. In those cases, the trial courts may be in a position to furnish sureties etc. In those cases, the trial courts may consider -- keeping in view of the facts of each case especially the period spent in jail -- releasing them on bail by furnishing personal bonds."

10. Considering the facts and circumstances of the case, the judgment passed by Apex Court in the case of **R.D. Upadhyay (supra)**, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

11. Let the applicant **Madan Goptal @ Madan Gopal Gaur** involved in Case Crime No. 1126 of 2023, under Sections 409, 420, 467, 468, 471, 120-B I.P.C., Police Station Colonelganj, District Allahabad be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

- 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 will appear before the trial court on the date

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fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.

iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

v. 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.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes his residential address, the applicant shall inform the court concerned about new residential address in writing.

12. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

13. The trial court is directed to proceed with the trial without granting unnecessary adjournments to any of the party.

Order Date :- 25.9.2023

Bhaskar