

Court No. - 64

Criminal Misc. Modification Application No. Nil of 2023

In

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 418 of 2023

Applicant :- Beeru Kumar

Opposite Party :- State of U.P.

Counsel for Applicant:- Yashwant Pratap Singh

Hon'ble Ajay Bhanot,J.

The applicant was granted bail by this Court by order dated 18.05.2023. While granting the bail following terms and conditions of sureties were provided by this Court in the order dated 18.05.2023:

"7. Let the applicant, Beeru Kumar, who is involved in the aforesaid case crime, be released on bail on his furnishing a personal bond and two sureties (one should be of a family member) each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

i. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.

ii. The applicant shall cooperate in the trial sincerely without seeking any adjournment.

iii. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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The applicant does not have any family member in the State of Uttar Pradesh. The sole surviving member of family is his father who resides abroad. His father is unable to return home and give his surety. Consequently, the applicant is unable to furnish the sureties as directed by this Court. Hence, the said surety condition is onerous. The applicant continues to remain in jail despite the order granting him bail.

The fixation of sureties has engaged the attention of various constitutional courts. This Court upon consideration of authorities point in **Arvind Singh v. State of U.P. Thru. Prin. Secy. Home Deptt. (Application U/S 482 No.2613 of 2023)** held:

"24. However despite unequivocal holdings of various constitutional courts the trial courts continue to adopt a rote response to a dynamic problem and approach the issue of fixation of sureties in a mechanical manner and neglect to make requisite enquiries as contemplated in the preceding parts of the judgment. The duties of the trial courts as well as other agencies while fixing sureties can be summed up as under:-

(1) In case a prisoner cannot arrange the sureties fixed by the trial court the former can make an application to the learned trial court for a lesser surety. Material facts relating to the socioeconomic status and roots in the community of the prisoner shall be stated in the application.

(2) Similarly it is bounden duty of the DLSA to examine the status of the prisoners who have been enlarged on bail but are not set at

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liberty within seven days of the bail order. In case the prisoners cannot arrange for sureties they may be advised and assisted to promptly move an application for re-fixation of the surety in light of this judgment.

(3) Once the prisoner makes such application the trial court shall make an enquiry consistent with this judgment and pass a reasoned order depicting consideration of relevant criteria for fixing sureties with utmost expedition.

(4) Every trial court is under an obligation to satisfy itself about the socioeconomic conditions of the prisoner and probability of absconding and his roots in the community and fix sureties commensurate with the same. The State authorities or other credible agencies as the court may direct to promptly provide the requisite details.

(5). In case the prisoner is from another State and is unable to produce local sureties, sureties from the prisoner's home district or any other place of his choice determined by the court of competent jurisdiction of the said district and State shall be accepted by the trial court.

(6) The prisoner/counsel may state the details of the socio-economic status of the prisoner in the bail application in the first instance. This will facilitate an expeditious consideration of the issue related to sureties."

Courts should examine the socioeconomic conditions of a prisoner while fixing surety conditions. Further, the Courts should not impose conditions which cannot be satisfied by the prisoner on account of his destitute circumstances or conditions of want or deprivation faced by him.

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I find merit in the submission that the condition put by this Court of (one should be of a family member) is an onerous one in the facts and circumstances of this case.

In the wake of preceding discussion the modification application is allowed. The surety conditions put by this Court in the order dated 18.05.2023 to the effect that (one should be of a family member) as sureties is recalled. The matter is remitted to the trial court. The trial court shall fix sureties as per socioeconomic conditions of the applicant and in light of the observations made above.

While fixing sureties the trial court has to apply its mind to the socioeconomic conditions of the prisoner. Further the trial court while fixing sureties shall not impose any onerous or arbitrary conditions which defeat the order granting bail to the concerned prisoner or prevent the applicant from being set forth at liberty.

Before parting some observations have to be made in the facts of this case. The applicant is in jail for almost one year. The bail application of the applicant was allowed by this Court on 18.05.2023. However, the applicant has not been set forth at liberty on account of the surety conditions in the bail order.

Prima facie it appears that the trial court and the DLSA did not discharge their duties of making necessary enquiries even after the prisoner was not set forth at

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liberty within one week after the bail was granted by this Court in light of **Arvind Singh (supra)**. The District Legal Services Authority has not moved any application nor preferred any advice to the applicant in light of the judgment rendered in **Arvind Singh (supra)** to seek a modification of the order dated 18.05.2023.

It appears that the directions of this Court in **Arvind Singh (supra)** have not been complied with by the trial court and the DLSA respectively.

All trial courts as well as DLSAs are under an obligation to comply with the directions of this Court in **Arvind Singh (supra)** as well as those made above in this order. Learned District Judge, Deoria shall make necessary enquiries and appropriately counsel the trial judge and the DLSA, Deoria in the matter.

It is clarified that the above observations shall not be construed adversely against any judicial officer.

A copy of this order shall be sent to Secretary, State Legal Services Authority.

Order Date :- 13.5.2024

Pravin