

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32796 of 2023

Applicant :- Pravesh Kumar Yadav

Opposite Party :- N.C.B.

Counsel for Applicant :- Vinay Bhushan Upadhyay, Narendra Deo Upadhyay

Counsel for Opposite Party :- Ashish Pandey

Hon'ble Ajay Bhanot, J.

The learned trial court has recorded that the P.W. 1 who is the departmental officer was not present before the learned trial court on 15.05.2023, 27.06.2023, 07.08.2023 & 16.08.2023 and found that this was caused for delay.

The counter affidavit has been filed by the NCB giving the explanation for absence of P.W.1 on various dates. The explanation is extracted hereunder:

"On 15.05.2023 the PW-01 could not appear since the SPP of NCB intimated that due to some personal issues, he will not be able to participate in the hearing on the said date.

On 27.06.2023 the P.W.-01 appeared on the dates 30.05.2023 and 13.06.2023 and his examination-in-chief was conducted alone with the production of Maalmudda. The P.W.-01 couldn't appear on 27.06.2023 in the wake of various training and awareness events conducted during the NASHA MUKTI PAKHWARA on the occasion of International Day against Drug Abuse & Illicit Trafficking on 26th June by the NCB Lucknow in association with various Drug Law Enforcement agencies of the State of U.P. Since the PW-01 was also

entrusted with various responsibilities in the conduct of these events w.e.f. 12.06.2023 to 26.06.2023, hence, a request for adjournment was submitted to the SPP for seeking permission from the court. Thereafter, the PW-01 ensured his presence on 13.07.2023.

On 07.08.2023 & 16.08.2023 the PW-01 couldn't appear as he was on leave due to some domestic exigencies and accordingly an exemption was sought from the court, which was granted. The matter was represented by SPP, NCB on both these dates."

The explanation for absence of P.W.-1 is completely unsatisfactory. This creates an impediment in the process of the Court. It is the responsibility of the NCB to ensure that top priority is given to the court proceedings where the applicants/accused persons are in jail.

The Zonal Director, NCB, Lucknow shall issue strict instructions in this regard to the department.

Counter affidavit also discloses that the presiding officer was on leave on various occasions i.e. 28.08.2023, 05.09.2023, 16.09.2023, 26.09.2023, 04.10.2023.

The Court is equally conscious that some prosecution witnesses in this case are government official who perform their official duties apart from deposing as prosecution witnesses in this case. The absence of the witnesses from their official duties cannot be countenanced.

In case the presiding officer was on leave for a long period, it is the responsibility of the concerned district court officials to inform the SPP in writing regarding the vacancies in the court so that the official can be informed in advance. This will prevent the officials from being absent from duty without good reason and also enable them to plan their journeys accordingly.

The learned District & Sessions Judge shall ensure that the trial court resumes its sitting of the court and proceed the trial on a day to day basis.

The Court would like to express its dissatisfaction about the long absence of the presiding officer.

The District Judge, Sonebhadra may kindly take a note of this fact.

By means of the second bail application the applicant has prayed to be enlarged on bail in Case Crime No.31 of 2020 at Police Station-N.C.B. Lucknow, District-Sonebhadra under Sections 8(C)/20/25/29 of the NDPS Act. The applicant is in jail since 07.11.2020.

The first bail application of the applicant was rejected by this Court on 24.05.2022.

The accused persons who have been granted bail by this Court were not arrested with the drugs in their possession. The drugs were seized from the possession of the applicant. This distinguishes the role of the applicant from

the other co-accused persons. The trial is on foot. Offence is grave. No fresh ground for bail is made out at this stage. The bail application is dismissed.

Considering the gravity of the offence, interest of justice will be served by directing the learned trial court to expedite the trial within a stipulated period of time.

The trial court is directed to conclude the trial within a period of six months from the date of receipt of a certified copy of this order. The learned trial court shall proceed with the hearing on a day to day basis to ensure that the above stipulated timeline of six months is strictly adhered to. All witnesses and counsels are directed to cooperate with the trial proceedings.

The trial court has also to be conscious of the rights of the accused persons and is under obligation of law to ensure that all expeditious, necessary and coercive measures as per law are adopted to ensure the presence of witnesses. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties / counsel.

The learned trial court shall issue summons by regular process as per Section 62 Cr.P.C. and also by registered post as provided under Section 69 Cr.P.C. to expedite the trial.

The learned trial court shall promptly take out all strict coercive measures against all the witnesses in accordance with law who fail to appear in the trial proceeding. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties / counsel.

The police authorities shall ensure that warrants or any coercive measures as per law taken out by the learned trial court to ensure that the attendance of the witnesses are promptly executed.

The Superintendent of Police, Sonebhadra shall file an affidavit before the trial court on the date fixed regarding status of execution of the warrants/service of summons taken out by the learned trial court.

In case there is a failure on part of the police authorities to execute the warrants or other coercive measures, the Superintendent of Police, Sonebhadra shall state the reasons for the same in the said affidavit and also show the steps taken to execute the warrants. The Superintendent of Police, Sonebhadra shall simultaneously inform the Additional Director General of Police (ADG), Varanasi Zone, Varanasi about the aforesaid failure of the police authorities in the first instance to execute the warrants and coercive measures issued by the learned trial court. If

required, the Additional Director General of Police (ADG) Varanasi Zone, Varanasi may issue an appropriate directions to ensure that the warrants issued are promptly executed by the learned trial court.

The delay in execution of warrants and consequent absence of witnesses is one of the principal causes of delays in criminal trials and has to be addressed effectively by all stakeholders.

The trial judge shall submit a fortnightly report on the progress of trial and the steps taken to comply with this order to the learned District Judge.

A copy of this order be communicated to the learned trial judge through the learned District Judge, Sonabhadra by the Registrar (Compliance) by FAX.

Order Date :- 18.10.2023
Ashish Tripathi