Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2840 of 2021

Applicant :- Sonu Singh Second Bail

Opposite Party :- State of U.P.

Counsel for Applicant :- Prem Kumar Singh,R.K.S. Chauhan

Counsel for Opposite Party :- G.A.,Pramod Kumar Yadav

Hon'ble Brij Raj Singh,J.

1. This is the second bail application for releasing the applicant on bail who is an accused in case crime no.158 of 2017 (S.T. No.186/2018), under sections - 376 D, 323, 506 IPC, registered at police station - Bihar, District Unnao. The first bail application was rejected on 29.9.2020 and at the time of rejection of first bail application PW - 1 Prosecutrix was examined, however, after rejection of first bail application PW-2 the husband of the prosecutrix and PW-3 SI Virendra, PW-4 lady constable have been examined.

2. Learned counsel for the applicant has filed a supplementary affidavit dated 30.11.2023 and questionnaire of the trial court has been filed along with the supplementary affidavit which indicates that four witness have been examined and the case is fixed for recording the statement of further witnesses. It has been submitted by the learned counsel for the applicant that the questionnaire indicates that some more witnesses are yet to be examined and all the fact witnesses have been examined, therefore, there is no question of teampering and threatening.

3. Learned counsel for the applicant has submitted that the first bail was rejected long back and trial is still not concluded and applicant is in jail for the last more than five years and ten months, i.e., with effect from 04.02.2018.

4. Learned counsel for the applicant has further submitted that in the present case it may be seen that there is complete violation of the Article 21 of the Constitution of India because applicant being undertrial cannot be kept in jail for such long span of time.

5. Learned counsel for the applicant has relied upon the judgments of Hon'ble Supreme Court in the case of ***Union of India vs. K.A. Najeeb delivered in Criminal Appeal No.154 of 2020, Prabhakar Tewari vs. The State of U.P. delivered in Criminal Appeal No.98 of 2021 and Sanjay Chandra vs. Central Bureau of Investigation reported in (2012) 1 SCC 40.*** The judgment of Hon'ble Supreme Court in the case of Union of India vs. K.A. Najeeb (supra) has considered the aspect of the undertrial and also period of incarceration.

"*16. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in cae a potential criminal is left at large pending trial, Courts are tasked with dciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.*

18. It is thus clear to us that the presence of

statutory rstrictions like Section 43 of UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of Page 11 of Constitution. Indeed, both the restrictions under a Statute as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43 (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

19. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

6. Learned counsel for the applicant has submitted that in view of the aforesaid case the applicant is entitled for bail because for the last almost about six years he is in jail.

7. Learned counsel for the applicant has further

relied upon the judgment in the case of Prabhakar Tiwari (supra) and in para 7 the issue of criminal cases pending against the accused is also considered. Learned counsel for the applicant has submitted that though the applicant has 8 cases to his credit but once the court comes to conclusion that the applicant is entitled for bail the criminal history will not come into play to release him and this question has also been dealt in the case of Prabhakar Tiwari (supra) which is reproduced as below :-

"*7.On considering the submission of the learned counsel for the parties. Having regard to the circumstances of ths case, in our opinion, there has been no wrong or improper exercise of discrtion on the part of the High Court in granting bail to the accused. The factors outlined in the case of Mahipal (supra) for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex-facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail. The appeal is dismissed.*"

8. Learned counsel for the applicant has lastly relied upon the judgment of Sanjay Chandra (supra). Relevant paras of the said judgment are being reproduced as under :-

21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be pushed in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

27. This Court, time and again, has stated that bail is the rule and commital to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.

9. In Gurcharan Singh v. State (Delhi Admn.) the Court took the view:-

"*22. In other non bailable cases the court will exercise its judicial discretion in favour of granting bail subject to sub section (3) of Section 437 CrPC if it deems necessary to act under it. Unless exceptional circumstances are brought to the*

notice of the Court which may defeat proper investigation and a fair trial, the court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarliy no option in the matter but to refuse bail subject, however, to the first proviso to Section 437 (1) CrPC and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence.

24. Section 439 (1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437 (1) there is no ban imposed under Section 439 (1) CrPC against granting of bail by the High court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439 (1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437 (1) and section 439 (1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with the grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its

investigation and other relevant grounds which, in view of somany valuable factors, cannot be exhaustively set out."

10. After looking into the judgment of the Hon'ble Supreme Court at the moment I am also of the view that the applicant has served five years and ten months in jail and his personal liberty cannot be curtailed for such long span of time and in my opinion Article 21 of the Constitution of India will come into play in the present case and applicant is entitled for bail.

11. Learned AGA opposed the prayer for bail but could not dispute the aforesaid contention. Learned A.G.A. submits that the minimum sentence provided under Section 376 D IPC is 20 years which may extend up to imprisonment for life.

12. Learned counsel for the complainant is not present.

13. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and considering the fact that the applicant is in jail for five years and ten months and in view of the judgments in the case of ***Union of India vs. K.A. Najeeb delivered in Criminal Appeal No.154 of 2020, Prabhakar Tewari vs. The State of U.P. delivered in Criminal Appeal No.98 of 2021 and Sanjay Chandra vs. Central Bureau of Investigation reported in (2012) 1 SCC 40*** the applicant is entitled to be released on bail.

14. Let the applicant, Sonu Singh be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) 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.

(ii) 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.

(iii) 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.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

15. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 20.12.2023
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Digitally signed by :-
MANISH SAXENA
High Court of Judicature at Allahabad,
Lucknow Bench