

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10987 of 2023

Applicant :- Pramod Kumar

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt., Lko.

Counsel for Applicant :- Amit Kumar Awasthi, Anand Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Ravish Kumar Mishra, learned A.G.A.-I for the State and perused record.

2. This third bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.1029 of 2014 under Section 498-A, 304-B, 302 IPC @ Section 3/4 of D.P. Act, PS Payagpur, district Bahraich.

3. The first bail application Bail No.5409 of 2015 was rejected on 11.5.2017 and the second bail application Bail No.4979 of 2020 was rejected on 27.7.2020 and this Court directed that trial will be concluded within a period of one year.

4. Learned counsel for the applicant has submitted that after second bail rejection order dated 27.7.2020, only two witnesses PW-1 and 2 have been examined by the Trial Court. However, the trial is still pending and the applicant is in Jail since 15.2.2014 and more than 8 years and 8 months have passed in Jail. He has further submitted that though the maximum sentence under Section 304-B IPC is life imprisonment but minimum sentence is 7 years and the applicant is in Jail for more than 8 years and 8 months and has undergone sufficient time in Jail.

5. Learned counsel for the applicant has relied judgments of Supreme Court in the case of **Union of India. Vs. K.A. Najeib, AIR 2021 SC 712**. Para-16 of the said judgment is quoted as under:-

"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 case a potential criminal is left at large pending trial, Courts are tasked with deciding 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."

6. Learned counsel for the applicant has further relied upon the judgment of Hon'ble Supreme Court in the case of **Smt. Akhtari Bi. Vs. State of M.P., AIR 2001 SC 1528 and Mohd. Muslim @ Hussain. Vs. State (NCT of Delhi), 2023 LiveLaw (SC) 260**. Relevant paras 21, 22 and 23 of Mohd. Muslim @ Hussain (*supra*) are quoted as under:-

"21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31 st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in *A Convict Prisoner v. State* as "a radical transformation" whereby the prisoner:

"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by

ordinary standards. Self-perception changes."

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal (also see Donald Clemmer's 'The Prison Community' published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

7. It has been submitted by the learned counsel for the applicant that the trial will not be concluded in near future and the applicant has undergone in Jail for more than minimum period prescribed under Section 304-B IPC.

8. On the other hand, learned A.G.A. has opposed the bail and submitted that second bail application was rejected on merit. However, learned AGA could not dispute the fact that the applicant has a long period of incarceration of 8 years and 8 months in Jail.

9. Considering over all facts and circumstances of the case, the argument that applicant is in Jail for a long period of incarceration of 8 years and 8 months in Jail, the argument supported by the judgment of Hon'ble Supreme Court (supra), it is a fit case for bail.

10. Let the applicant Pramod Kumar 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.

11. 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 :- 19.10.2023
Rajneesh JR-PS)