

**Court No. - 4**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 11321 of 2023

**Applicant :-** Manoj Upadhyaya @ Manoj Pathak @ Vijay Kumar Tiwari

**Opposite Party :-** State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Lko.

**Counsel for Applicant :-** Javed Khan, Ajmal Khan

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajesh Singh Chauhan,J.**

1. Heard Sri Ajmal Khan, learned counsel for the accused-applicant, and Mr Sushil Kumar Pandey, learned Additional Government Advocate for the State.

2. Learned A.G.A. has filed counter affidavit, the same is taken on record.

3. Sri Ajmal Khan has stated that he shall not file rejoinder affidavit as he is seeking parity with the other co-accused persons, who have been granted bail. He has also stated that since the trial has not been concluded in terms of the order of this Court, which was passed while rejecting the first bail application, therefore, this is the more reason not to file rejoinder affidavit.

4. This is the second bail application as first bail application bearing Criminal Misc. Bail Application No.11105 of 2021 has been rejected on 07.05.2022. While rejecting the first bail application of the present applicant, the following direction has been issued by this Court, which reads as under:-

*"Accordingly, bail application is rejected.*

*Further, I am not convinced to grant parity to the present applicant with those co-accused persons who have been granted bail by this court inasmuch as the present applicant has not explained his criminal history in the bail application and no reply has been given by him to the contents of the counter affidavit filed by the opposite parties explaining the criminal history of the present applicant.*

*Before parting with, it is expected that the trial shall be concluded with expedition, say, within a period of one year. Further, the learned trial court may take all coercive measures as per law if either of the parties do*

*not co-operate in the trial properly. The learned trial court shall fix short dates to ensure that trial is concluded within a period of nine months in terms of Section 309 Cr.P.C."*

5. Learned counsel for the applicant, while pressing this bail application, has submitted that after rejection of first bail application of the present applicant vide order dated 07.05.2022, six co-accused persons, namely, Pawan Mishra @ Ram Sagar Mishra, Daddu Pasi @ Krishna Kumar, Vivek alias Deepak Ojha, Sunil Kumar Gupta alias Bachha, Sanjay Singh alias Seenu and Brijesh Kumar alias Deepu Ojha have been granted bail by this Court vide orders dated 03.07.2023, 03.08.2023, 24.08.2023, 19.09.2023, 19.09.2023 and 27.09.2023 passed in Criminal Misc. Bail Applications No.2088 of 2023, 11325 of 2022, 9383 of 2023, 10448 of 2023, 5605 of 2023 and 10869 of 2323 respectively, so this ground may be considered as fresh ground to consider this second bail application. It has been further submitted with vehemence that the case of the present applicant lies on better footings than the aforesaid co-accused, who have already been enlarged on bail inasmuch as there is no specific allegation against the present applicant and no specific role has been attributed to him. It has been further submitted that the applicant has been attributed general role. With respect to criminal history mentioned by the State, learned counsel for the applicant has submitted that in Case Crime Nos. 065 of 2017 and 0231 of 2018 lodged at Police Station Baghrai, District Pratapgarh, the applicant has been enlarged on bail vide orders passed by the learned trial Court, copies of which have been brought on record by means of Annexure Nos. 21 and 22 to the bail application respectively; with respect to Case Crime No.0261 of 2017, lodged at Police Station Baghrai, District Pratapgarh, it is stated that the applicant has no knowledge as he has never been issued summoned in this regard, while Case Crime No.0302 of 2016 is the present case.

6. Learned counsel for the applicant has also pressed this bail application, *inter alia*, on the other ground that despite the specific directions being issued by this Court to conclude the trial within a period of nine months, about more than sixteen months have passed but the trial has not been concluded. However, he has submitted that there are total five fact witnesses; out of which, three fact witnesses have been examined and one fact witness i.e. wife of the deceased, namely, Smt. Poonam Singh has refused to enter into the witness box as this fact has been considered by this Court while granting bail to the co-accused person i.e. Pawan Mishra @ Ram Sagar Mishra (supra), therefore, the only one fact witness is to be examined i.e. son of the deceased, namely,

Harshvardhan. Learned counsel has further submitted that case of the present applicant is on better footings as he has not been assigned the role of firing, whereas co-accused persons, namely, Vivek alias Deepak Ojha and Brijesh Kumar alias Deepu Ojha, who have been assigned the role of firing, have already been granted bail by this Court after considering each and every aspect of case vide orders dated 24.08.2023 and 27.09.2023 (supra), therefore, the present applicant may also be enlarged on bail on the principles of parity. He has further submitted that the applicant undertakes that he shall co-operate in the trial proceedings and shall not misuse the liberty of bail, if so granted by this Court. Further, the applicant shall abide by all terms and conditions of the bail order.

7. Learned counsel for the applicant has also submitted that the period of incarceration of the present applicant may also be considered inasmuch as the present applicant is in jail/ judicial custody w.e.f. 08.11.2018, therefore, about five years' period has passed since the present applicant is in jail. As per Sri Ajmal Khan, there are total twenty seven prosecution witnesses, out of them five are fact witnesses. Out of those five fact witnesses, the examination of one fact witness i.e. son of deceased is yet to take place. But, in any case, for examining the remaining twenty three prosecution witnesses and defence witness etc., some substantial time may likely to take place. In support of his contention, Sri Ajmal Khan has referred the dictum of the Apex Court in re: **Union of India Vs. K.A. Najeeb, AIR 2021 SC 712**. Para 16 of the judgment is being reproduced herein below:-

*"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."*

8. In the case of **K.A. Najeeb** (supra), the Apex Court has observed that while granting bail to the accused, the long period of incarceration may be considered when it is noticed that there is no likelihood to conclude the trial with promptness. In support of his contention, he has also relied upon the dictum of

the Apex Court in re; **Paras Ram Vishnoi Vs. The Director, Central Bureau of Investigation, Criminal Appeal No.693 of 2021 (Arising out of SLP(Cri.) No.361 of 2020.**

9. Per contra, learned A.G.A. has opposed this second bail application by submitting that the applicant has committed a heinous and, therefore, he may not be enlarged on bail.

10. On being confronted the learned A.G.A. as to why the direction of this Court has not been followed in its letter and spirit thereby the specific order was issued to conclude the trial within a period of nine months, he could not give explanation on that. On being further confronted as to why all the fact witnesses have not been examined in a period of more than sixteen months from the order dated 07.05.2022 when the first bail application of the applicant was rejected, he could not explain the reason.

11. Having heard learned counsel for the parties and having perused the material available on record and the first bail rejection order, it is clear that despite the specific direction being issued by this Court, the trial has not been concluded within time stipulated; the present applicant is in jail/ judicial custody for about five years, to be more precise w.e.f. 18.11.2018; out of total five fact witnesses, three fact witnesses have been examined, one fact witness i.e. wife of the deceased is said to have refused to enter into the witness box, however, the same fact is subject to the verification inasmuch as the testimony of the wife of the deceased may not be ignored; notably, six co-accused persons, namely, Pawan Mishra @ Ram Sagar Mishra, Daddu Pasi @ Krishna Kumar, Vivek alias Deepak Ojha, Sunil Kumar Gupta alias Bachha, Sanjay Singh alias Seenu and Brijesh Kumar alias Deepu Ojha have been granted bail by this Court after rejection of first bail application of the present applicant; the case of the present applicant is on better footings as he has not been assigned the role of firing, whereas co-accused persons, namely, Vivek alias Deepak Ojha and Brijesh Kumar alias Deepu Ojha, who have been assigned the role of firing, have already been granted bail by this Court after considering each and every aspect of case vide orders dated 24.08.2023 and 27.09.2023 (supra); criminal history of the applicant has been adequately explained; there are total twenty seven prosecution witnesses, out of them only four witnesses have been examined, therefore, it may take substantial time to examine the remaining twenty three prosecution witnesses and thereafter the defence witnesses, if any, and to complete other formalities in terms of law, I find it appropriate to enlarge the applicant on bail.

12. The Apex Court in re; **K.A. Najeed** (supra) and **Paras Ram Vishnoi** (supra) has categorically observed that if there is no likelihood to conclude the trial with promptness and period of incarceration of the accused is so long, the bail application of such accused person may be considered.

13. Therefore, in the given circumstances and considering the dictum of the Hon'ble Apex Court in re: **K.A. Najeed** (supra) and **Paras Ram Vishnoi** (supra), the aforesaid grounds are considered as fresh to consider the second bail application, therefore, without expressing any opinion on merits of the case, the second bail application of the present applicant is **allowed**.

14. Let applicant- **Manoj Upadhyaya alias Manoj Pathak alias Vijay Kumar Tiwari** be released on bail in Case Crime No.0302 of 2016, under Sections 147, 148, 149, 302, 307 and 404 IPC, Police Station, Baghrai, District Pratapgarh on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the 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.

(v) The applicant shall not leave India without previous permission of the court.

15. Before parting with, learned Trial Court is directed to conduct and conclude the trial with expedition and no unnecessary adjournment shall be given to any of the parties.

16. It is also made clear that observations given in this order are only for the purpose of bail and the same shall not affect the findings of the Trial Court in any manner.

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**[Rajesh Singh Chauhan,J.]**

**Order Date :- 12.10.2023**  
MVS/-