

Court No. - 84

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34950 of 2024

Applicant :- Manoj

Opposite Party :- State of U.P.

Counsel for Applicant :- Ambrish Kumar Kashyap

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1. Heard learned counsel for the applicant and Mr. Deepak Mishra, learned Additional Government Advocate representing the State.

2. The instant fourth bail application under Section 439 of Cr.P.C. has been filed on behalf of the applicant-Manoj with a prayer to release him on bail in Case Crime No. 244 of 2016, under Sections 147, 148, 149, 302 of I.P.C., Police Station-Nidhauri Kalan, District-Etah, during the pendency of trial.

3. First, second and third bail applications of the accused-applicant were rejected vide orders dated 05.04.2018, 18.07.2022 and 05.04.2023 in Criminal Misc. Bail Application Nos. 21550 of 2017, 19321 of 2021 and 35581 of 2022 respectively.

4. It is argued by learned counsel for the applicant that the applicant has been languishing in jail since 13.02.2017, but till date his trial has not been concluded. The Co-ordinate Bench of this Court vide order dated 13.09.2024 passed in Criminal Misc. Bail Application No. 21168 of 2024 has granted bail to co-accused Pancham Singh on the ground of delay in conclusion of trial, therefore, he may also be released on bail. Lastly, it is submitted that there is no chance of the applicant of fleeing away from the judicial process or tampering with the prosecution evidence. In case he is released on bail, he will not misuse the liberty of bail and will cooperate with the early disposal of the case.

5. Per contra, learned Additional Government Advocate for the State opposed the prayer for bail of the applicant by contending that so far as merit of the case is concerned, it is a case of murder. The first shot was fired by co-accused Pancham Singh at the deceased and second shot was fired by applicant-Manoj, whereby deceased succumbed to injuries. Eye-witness Yogesh @ Mintu has been examined before the trial court as PW-2 and he supported the prosecution case.

6. Having heard learned counsel for the parties and examined the matter in its entirety, I find that considering the statement /examination-in-chief of PW-1, wherein he has attributed the role of firing to the applicant and co-accused Pancham Singh as well as the fact that third bail application of co-accused Pancham Singh was rejected by the Coordinate Bench, the third bail application of the applicant was also rejected. Now this fourth bail application, which has been filed mainly on the ground of long incarceration of the applicant and inordinate delay in concluding the trial as well as plea of parity with the bail order of co-accused Pancham Singh, who has now been granted bail by the Coordinate Bench as noted above.

7. This Court considering the aforesaid facts, vide order dated 27.09.2024 had called a report from the concerned Presiding Officer with regard to present status of trial of the applicant. In compliance thereof trial court submitted its report dated 14.10.2024 mentioning following dates and events:-

i-F.I.R. was lodged on 23.08.2016.

ii-Charge sheet was submitted on 22.11.2016.

iii-Case was committed to the Court of Sessions on 28.11.2016.

iv-Charge against the accused-applicant was framed on 15.01.2018.

v-Examination-in-chief of PW-1 was recorded on 09.07.2018.

vi-Cross-examination of PW-1 was done on 26.11.2018, 18.02.2019 and 06.09.2019.

vii-Examination-in-chief of PW-2 was recorded on 01.11.2022.

viii-Cross-examination of PW-2 was done on 03.11.2022, 15.06.2023 and 16.06.2023.

ix-Examination-in-chief of PW-3 was recorded on 13.03.2024.

x-Examination-in-chief of PW-4 was recorded on 30.07.2024.

xi-Examination-in-chief of PW-5 was recorded on 30.07.2024.

xii-Examination-in-chief of PW-6 was recorded on 30.07.2024.

xiii-Cross-examination of PW-4 was done on 14.08.2024.

xiv-Cross-examination of PW-5 was done on 15.10.2024.

8. Vide order of this Court dated 27.09.2024, the Director General of Police, U.P., Lucknow was also directed to file his personal affidavit indicating therein as to why prosecution is not producing the prosecution witnesses before the trial court even in heinous matters and being Head of Police Department in the State of U.P., what steps have been taken by him to ensure production of prosecution witnesses on the dates fixed before the trial court. He was also directed that if in any matter, he has fixed the responsibility of the person concerned, the detail of the same shall also be brought on record.

9. In compliance of the aforesaid order dated 27.09.2024, the Director General of Police, U.P., Lucknow has filed his personal affidavit dated 16.10.2024 with the stand that on several dates, the Office of the Director General of Police, U.P., Lucknow had issued necessary directions regarding appearance of the Police Personnel before the trial court on the date fixed by means of Circulars dated 16.08.2015, 20.10.2015, 04.02.2020, 18.01.2021, 16.08.2023, 10.10.2023, 19.01.2024 and 13.04.2024 but reply with regard to second query of the Court as mentioned in the order dated 27.09.2024 was not found satisfactory because no detail about the action taken against any erring officer prior to passing of the order of this Court dated 27.11.2024 was furnished in the affidavit dated 16.10.2024, therefore, vide order dated 08.11.2024, a week's further time was allowed to file specific reply.

10. Thereafter, the Director General of Police, U.P., Lucknow has filed his second affidavit dated 22.11.2024 annexing district-wise chart relating to action taken against the erring police personnel, which indicates that between 27.05.2024 and 18.11.2024 actions have been initiated against 35 police personnel by instituting inquiry against them.

11. Now this Court proceeds to consider the effect of delay in conclusion of trial on the plea of bail.

12. In ***Ashim alias Asim Kumar Haranath Bhattacharya alias Asim Harinath Bhattacharya alias Aseem Kumar Bhattacharya Vs. National Investigation Agency, (2022) 1 SCC 695***, Hon'ble Supreme held as under:

"This Court has consistently observed in its numerous judgments that the liberty guaranteed in 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 is imperative and the under trials cannot indefinitely be detained pending trial. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge him on bail."

"Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice."

13. In ***Union of India Vs. K.A. Najeed, (2021) 3 SCC 731***, respondent-K.A. Najeed was granted bail by the High Court under UAPA. Being aggrieved by the order of High Court granting bail to respondent, the appellant-Union of India filed appeal before the Hon'ble Supreme Court. Hon'ble Supreme Court while upholding the order of the High Court, after considering a catena of judgements on the point, held as under:

"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."

Yet another reason which persuades us to enlarge the Respondent on bail is that Section 43D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS. Unlike the NDPS where the competent Court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under the UAPA. Instead, Section 43D (5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc."

14. In ***Chintan Vidyasagar Upadhyay Vs. State of***

Maharashtra, Petition for Special Leave to Appeal (Crl) No. 2543 of 2021, decided on 17.09.2021, the petitioner is facing trial for offences punishable under Sections 302, 396, 201, 109 and 120B read with 34 of the IPC. The application for bail filed by the petitioner was dismissed by the High Court on 21.12.2020. Aggrieved thereby, he filed Special Leave Petition. The Supreme Court after hearing the learned counsel for the parties and scrutinizing the record, while granting bail to the accused, held that the petitioner is in custody for nearly 6 years, the trial is proceedings and 28 witnesses have been examined and 12 witnesses are yet to be examined.

15. In **Paras Ram Vishnoi Vs. The Director, Central Bureau of Investigation, 2021 SCC OnLine SC 3606**, the Supreme Court held as under:

"On consideration of the matter, we are of the view that pending the trial we cannot keep a person in custody for an indefinite period of time and taking into consideration the period of custody and that the other accused are yet to lead defence evidence while the appellant has already stated he does not propose to lead any evidence, we are inclined to grant bail to the appellant on terms and conditions to the satisfaction of the trial court."

16. In **Indrani Pratim Mukerjea Vs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 695**, the Supreme Court held that *"admittedly, the petitioner has been in custody for 6-1/2 years. We do not intend to comment on the merits of the case, which might be detrimental to the interest of either the prosecution or the defence. Taking into account the fact that the petitioner has been in custody for 6-1/2 years and even if 50% of the remaining witnesses are given up by the prosecution, the trial will not complete soon, we are of the considered view that the petitioner is entitled to be released on bail."*

17. The Apex Court in the matter of **Mubarak Ali Vs. State of Uttar Pradesh** passed an order dated 05.09.2024 in Petition for Special Leave to Appeal (Crl.) No. 8215 of 2024 granting bail to accused who was in custody as an under-trial for about seven years in connection with unnatural death of his wife with the following observations and directions:-

"7. Before parting with the case, it is noticed that there are many instances of prolonged trial and on that basis the accused who are charged with even heinous crimes, are getting the opportunity to seek bail. Since several such cases have come to the notice of this Court, we deem it appropriate to request the Hon'ble Chief Justice

of the Allahabad High Court to take appropriate measures in coordination with State Authorities and the concerned Presiding Officer of the concerned Courts for ensuring expeditious conclusion of Trial particularly in heinous crimes and crimes against women and children."

18. The Apex Court in the matter of **Balwinder Singh Vs. State of Punjab and another** passed an order dated 09.09.2024 in Petition for Special Leave to Appeal (Crl.) No. 8532 of 2024 granting bail to accused who was in custody as an under-trial for about four years and three months, whereas in the said case twenty-one prosecution witnesses were already testified and seventeen more prosecution witnesses were proposed to be examined with the following observations:-

"7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution."

19. So far as status of trial of the applicant in the present case is concerned, I find that out of thirteen prosecution witnesses, only six prosecution witnesses have been testified before the trial court in eight years, whereas the accused-applicant is in jail since 13.02.2017 (about seven years and ten months). This Court is also of the view that the fair and speedy trial of an accused is a legal and fundamental right. Under the facts of the case considering the long detention of the accused-applicant, as noted above, this Court feels that accused needs to be set at liberty to establish his innocence, otherwise, his continued detention will deprive him to frame his defence. It is also not in dispute that co-accused Pancham Singh having similar role has been granted bail on the ground of long incarceration as noted above, hence, I am of the view that the applicant has made out a case for bail. Accordingly, the bail application of the applicant is hereby **allowed**.

20. Let the applicant-**Manoj**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned:

(i) That the applicant shall cooperate with the expeditious disposal of the trial and shall regularly attend the court unless inevitable.

(ii) That the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts

to the court or to any police officer or tamper with the evidence.

(iii) That after his release, the applicant shall not involve in any criminal activity.

(iv) The identity, status and residential proof of sureties will be verified by court concerned before the release of the applicant on bail.

21. In case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of the applicant.

22. It is made clear that the observations contained in the instant order are confined to the issue of bail only and shall not affect the merit of the trial.

23. The Senior Superintendent of Police, Etah is directed to ensure the production of remaining prosecution witnesses on the dates fixed before the trial court, so that trial of the applicant may be concluded at the earliest.

24. On appearance of the prosecution witnesses, the trial court shall record their statements on the same date without granting any adjournment to either of the parties and also make an endeavour to conclude the trial of the applicant, expeditiously.

25. Before parting with the case, I would like to mention that the right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimize anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. In fact, lot of cases are coming before the courts for quashing of proceedings and for bail even in heinous offences on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge. No person shall be deprived of his life or his personal liberty except according to procedure established by law declares Article 21 of the Constitution.

26. In view of the above, the Director General of Police, U.P., Lucknow and Additional Director General (Prosecution), U.P., Lucknow are directed to ensure that in heinous matters, on receiving summons from the court, the prosecution witnesses are produced before the court concerned without any delay, so that

the trial of the accused may be concluded expeditiously.

27. The trial court is also directed that whenever it issues summons to the prosecution witnesses, it shall also ensure on the next date that the summons issued to the witnesses, must have duly been issued by the office and served upon the person/authority/witness concerned.

28. Copy of this order be sent to the Director General of Police, U.P., Lucknow, the Additional Director General (Prosecution), U.P., Lucknow, the Senior Superintendent of Police, Etah as well as to the concerned trial court for necessary information and compliance.

Order Date :- 5.12.2024

Kashifa