

Neutral Citation No. - 2024:AHC-LKO:65912

Court No. - 13

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6132 of 2023

Applicant :- Akash Lodhi

Opposite Party :- State Of U.P. Thru. Prin. Secy. Ministry Of Home Affairs Govt. U.P. Lko.

Counsel for Applicant :- Sameer Singh, Sakshi Singh, Yogesh Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. The present bail application has been filed by the applicant seeking bail in F.I.R./Crime No.0302 of 2020, under Sections 302/34 I.P.C., Police Station- Thakurganj, District Lucknow.
3. It is stated that according to FIR No.0302 of 2020 dated 11.06.2020, accused applicant made several blows of knife on the neck of the husband of informant, who on account of such blows succumbed to his injuries.
4. It is also stated that co-accused – Munna Lal and Vikas @ Vikki have already been released on bail by this Court vide orders dated 28.09.2021 and 20.04.2023, passed in Bail Application No.6378 of 2020 and Criminal Revision No.882 of 2022 respectively, copies of which are annexed as Annexure No.17 to the instant application and Annexure No.1 to the rejoinder affidavit.
5. It is further stated that the applicant, having no criminal history, is in jail since 11.06.2020 on account of the allegations levelled against him.

6. It is further stated that the witnesses of fact produced by the prosecution, to establish/prove its case, namely, Kanchan Devi (P.W.1), Kusum (P.W.2) and Jaya (P.W.3) have already been examined.
7. It is also stated that formal witnesses, namely, Chandra Dev Sharma (P.W.4), Shivank Awasthi (P.W.5), Dr. Santosh Singh Yadav, Autopsy Surgeon (P.W.6), Anurag Pandey (P.W.7) have also been examined.
8. It is also stated that one witness of fact, namely, Sachin has not been examined till date.
9. It is also stated that as per charge sheet, the prosecution would examine total 33 witnesses but till date only seven witnesses have been examined.
10. It is further stated that the present bail application is being pressed on the sole ground which relates to period of incarceration as the applicant is languishing in jail since 11.06.2020 and about 26 witnesses are yet to be examined and in this view of the matter, the possibility of conclusion of trial in near future is extremely bleak.
11. It is further stated that taking note of the period of incarceration as also the number of witnesses to be examined and also that last witness, i.e. P.W.7 was examined on 11.12.2023 and trial is not proceeding in terms of Section 308 of Cr.P.C. (now repealed) and Section 34 of B.N.S.S., the applicant is entitled to be released on bail.
12. In regard to period of incarceration, learned counsel for the applicant has placed reliance on the judgment passed by the Hon'ble Apex Court in the case of *Union of India Vs. K.A. Najeeb* reported in (2021) 3 SCC 713 and *Paras Ram Vishnoi Vs. The Director General Bureau of Investigation*, passed in *Criminal Appeal No.693 of 2021 (Arising out of SLP (Crl.) 3610 of 2020)*, as per which, bail can be granted to those

accused persons on the ground that there is no possibility to conclude the trial in near future and there is a long incarceration period of that accused. Relevant para-16 of the case of **K.A. Najeeb (supra)** is quoted 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."

13. In the case of **Paras Ram Vishnoi (supra)**, the Hon'ble Apex Court has observed regarding point of incarceration period and delay in trial. The relevant part of the said judgment is quoted below:-

"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."

14. Learned counsel for the applicant also placed reliance upon the judgment(s) in the case of **Balwinder Singh Vs. State of Punjab, Special Leave to Appeal (Crl.) No(s).8523/2024, Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another**, reported in **2024 SCC Online SC 1693** and **Sheikh**

Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of U.P., reported in 2024 SCC Online SC 1755.

15. Relevant para nos.5 to 10 of the case of ***Balwinder Singh (supra)*** is quoted below:-

“5. In this case, 21 prosecution witnesses have already testified and it is submitted by the State's counsel Mr. Siddhant Sharma that 17 more witnesses are proposed to be examined after dropping of the earlier cited witnesses.

6. The High Court while rejecting bail had asked for conclusion of trial within 5 months. The 5 months period stipulated by the High Court will expire at the end of this month but as noticed earlier, the prosecution proposes to examine 17 more witnesses.

7. An accused has 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.

8. It is not for nothing the Author Oscar Wilde in "The Ballad of Reading Gaol", wrote the following poignant Lines while being incarcerated:

"I know not whether Laws be right, Or whether Laws be wrong: All that we know who be in jail Is that the wall is strong; And that each day is like a year, A year whose days are long."

9. The incident in the present case occurred on 25.06.2020 and the petitioner was arrested soon thereafter on 26.06.2020. By now, 6 co-accused have been granted bail. As the prosecution wishes to examine 17 more witnesses, the trial is unlikely to conclude on a near date.

10. Considering the above and to avoid the situation of the trial process itself being the punishment particularly when there is presumption of innocence under the Indian jurisprudence, we deem it appropriate to grant bail to the petitioner Balwinder Singh. It is ordered accordingly. Appropriate bail conditions be imposed by the learned trial court.”

16. Relevant para nos.9 to 21 of the case of **Javed Gulam Nabi Shaikh (supra)** is quoted below:-

“9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in [Gudikanti Narasimhulu & Ors. v. Public Prosecutor](#), High Court reported in (1978) 1 SCC 240. We quote:

“What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [[R v. Rose](#), (1898) 18 Cox] :

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."

11. The same principle has been reiterated by this Court in [Gurbaksh Singh Sibba v. State of Punjab](#) reported in (1980) 2 SCC 565 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment.

12. Long back, in [Hussainara Khatoon v. Home Secy. State of Bihar](#) reported in (1980) 1 SCC 81, this court had declared that the right to speedy trial of offenders facing criminal charges is “implicit in the broad sweep and content of [Article 21](#) as interpreted by this Court”. Remarking that a valid procedure under [Article 21](#) is one which contains a procedure that is “reasonable, fair and just” it was held that:

“Now obviously procedure prescribed by law for depriving a person of liberty cannot be “reasonable, fair or just” unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as “reasonable, fair or just” and it would fall foul of [Article 21](#). There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be

deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21.”

13. The aforesaid observations have resonated, time and again, in several judgments, such as [Kadra Pahadiya & Ors. v. State of Bihar](#) reported in (1981) 3 SCC 671 and [Abdul Rehman Antulay v. R.S. Nayak](#) reported in (1992) 1 SCC 225. In the latter the court re-emphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:

“The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial.”

14. In [Mohd Muslim @ Hussain v. State \(NCT of Delhi\)](#) reported in 2023 INSC 311, this Court observed 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 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. 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](#) reported in 1993 Cri LJ 3242, 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.”

15. The requirement of law as being envisaged under [Section 19](#) of the National Investigation Agency Act, 2008 (hereinafter being referred to as “the 2008 Act”) mandates that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under [Section 11](#) of the 2008.

16. A three-Judge Bench of this Court in [Union of India v. K.A. Najeeb](#) reported in (2021) 3 SCC 713] had an occasion to consider the long incarceration and at the same time the effect of [Section 43-D\(5\)](#) of the UAP Act and observed as under : (SCC p. 722, para 17)

“17. It is thus clear to us that the presence of statutory restrictions like [Section 43-D\(5\)](#) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the 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, the 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 safe-guard against the possibility of provisions like [Section 43-D\(5\)](#) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

17. In the recent decision, [Satender Kumar Antil v. Central Bureau of Investigation](#) reported in (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including [Section 37](#) NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the [Criminal Procedure Code, 1973](#) would apply:

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under [Section 37](#) of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of

value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under [Article 21](#) of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. [Article 21](#) of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating [Article 21](#) of the Constitution.”

17. Relevant para no.32 of the case of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of U.P. (supra)** is quoted below:-

“This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say

that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us."

18. It is also submitted that there is no apprehension that after being released on bail, the applicant may flee from the course of law or may otherwise misuse the liberty of bail and he will cooperate in trial. The prayer is to enlarge the applicant on bail.
19. Learned A.G.A. opposed the prayer for grant of bail but he could not dispute the above contentions made by the learned counsel for the accused-applicant particularly the period of incarceration as also settled proposition of law in this regard and that co-accused have already been granted bail by this Court.
20. Considering the facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by the learned counsel for the parties and keeping in mind the period of incarceration i.e. near about 4 years as also that co-accused Munna Lal and Vikas @ Vikki have already been granted bail by this Court and also that the statements of 26 witnesses have to be recorded before the trial court and the applicant has no criminal history, as mentioned in para no.37 of the affidavit filed in support of bail application, and also that it appears that the applicant is not in a position to influence the witnesses of the prosecution who have to be examined before the trial court and the judgments, referred above, and without expressing any opinion on the merits of the case, I find it to be a fit case for granting bail.
21. Let the applicant- **Akash Lodhi** be released on bail in aforesaid Case Crime, on his furnishing personal bond to the satisfaction

of the court concerned forthwith. Applicant is also directed to furnish two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

22. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

23. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

24. Observations made hereinabove by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 23.09.2024

Anand/-