

Neutral Citation No. - 2024:AHC-LKO:78882

Reserved on: 26.11.2024

Delivered on:28.11.2024

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12444 of 2021

Applicant :- Sandeep Yadav Second Bail

Opposite Party :- State of U.P.

Counsel for Applicant :- Manjusha Kapil,Rajesh Kumar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Chaudhary,J.

1. Heard learned counsel for the applicant, the learned A.G.A. for the State and perused the record.
2. The present second bail application has been filed on behalf of the applicant involved in F.I.R./Case Crime No.497 of 2018 under Sections 302, 307, 34, 120-B I.P.C., Police Station- Malihabad District- Lucknow with the prayer to enlarge the applicant on bail. The first bail application of the applicant was rejected by this Court vide order dated 19.02.2021.
3. Learned counsel for the applicant has submitted that the applicant is innocent and has been falsely implicated in the present case. The applicant has no criminal history and he is in jail since 29.08.2018, and thus, he has already undergone detention for more than six years and two months.
4. Learned A.G.A. has opposed the prayer for granting bail to the applicant but he has not disputed the above contention made by the learned counsel for the applicant.
5. Learned AGA on instructions further submits that out of 12 proposed witnesses statement of only 08 witnesses have already been recorded and produced in court.
6. Learned counsel for applicant next contented that the co-accused namely, Nanda @ Nagendra, Brijesh, Virendra, Saurabh @ Golu and Kuldeep Yadav have been already granted bail by this court on 14.03.2019, 14.03.2019, 26.10.2018, 11.12.2018 and 15.03.2019 passed in criminal Misc. Bail Application Nos. 492/2019, 10673/2018, 9163/2018, 10559/2018 and 3086/2019 respectively, photocopies of which are annexed as Annexure no-6 to the affidavit accompanying

the bail application and case of applicant stands almost on identical footing, hence, the applicant is also entitled for bail.

7. Lastly, it is contented that there is no possibility of the applicant of fleeing away the judicial process or tampering with the witness and in case, the applicant is enlarged on bail, the applicant shall not misuse the liberty of bail.

8. On the issue of under trial prisoners being kept in jail for long period due to delay in concluding trials, the Apex Court in ***Manish Sisodia Vs. Directorate of Enforcement*** reported in **2024 SCC OnLine SC 1920** observed that keeping an individual in custody for an extended period during a trial is improper. The Court highlighted that such delay disregard the well-established legal principle that bail is not meant to serve as a punishment. The relevant observations made in Paragraph no. 53 of the aforesaid judgment is being quoted as under:

"53. The Court further observed that, 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. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception."

9. The Apex Court in ***Jalaluddin Khan Vs. Union of India*** reported in **2024 SCC OnLine SC 1945** has reiterated the principle that "bail is the rule, and jail is the exception," which applies even in cases where the relevant statute imposes stringent conditions for granting bail. Paragraph no.21 of the aforesaid judgment is being quoted as under:

"21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out

for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution."

10. The Hon'ble Supreme Court also in **Union of India v. K.A. Najeeb**, reported in **(2021) 3 SCC 713** has held that undertrials cannot be indefinitely jailed and courts must balance societal safety with individual rights, granting bail when trials are unreasonably delayed. The relevant observations made in Paragraph no. 15 of the aforesaid judgement is being quoted as under:

"15. 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 [Supreme Court Legal Aid Committee (Representing Under-trial Prisoners) vs. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that under-trials 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, the 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, the courts would ordinarily be obligated to enlarge them on bail."

11. Thus, is well settled by the Supreme Court that while considering a bail application, the courts may look into the seriousness of the charges and the severity of the punishment. A bail application should not merely be rejected for the purpose of imposing imprisonment as a punitive measure or as a mark of disapproval of the conduct of accused.

12. Considering the facts and circumstances of the case, perusing the records and also considering the nature of allegations, arguments advanced by learned counsel for the parties, without expressing any opinion on merit of the case, I find it to be a fit case for granting bail to the applicant.

13. Let applicant **Sandeep Yadav** be released on bail in the aforesaid F.I.R./case crime number on his furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court

concerned subject to following additional conditions, which are being imposed in the interest of justice:-

(I) 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.

(II) 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.

(III) The applicant will not tamper with the prosecution witnesses.

(IV) The applicant will not indulge in any illegal activities during the period of bail.

(V) In case of breach of any of the above conditions, the trial court would be at liberty to cancel the bail of the applicant.

Order Date :-28.11.2024

Reena/-

(Vivek Chaudhary,J.)