

Court No. - 7

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10092 of 2023

Applicant :- Shubhankit Shukla @ Golu

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

Counsel for Applicant :- Ashok Kumar Shukla, Akhilendra Pratap Singh, Atul Verma, Nikhil Sonkar, Vinod Kumar Yadav

Counsel for Opposite Party :- G.A., Anil Kumar Awasthi

Hon'ble Alok Mathur, J.

1. This is third bail application preferred by the applicant, who is an accused in Case Crime No. 212 of 2019 under Sections 302, 393, 34 IPC, police station Kotwali Ganga Ghat, District Unnao.

2. The first bail application was rejected by means of order dated 28.7.2021 passed in Crl. Misc. Bail Application No.12639 of 2019 after this Court noticed that there was direct evidence of Himanshu Mishra, a witness who had seen the applicant entering the house of the complainant and had also heard noises of shout and cries subsequent to which it was found two children of the complainant have been murdered.

3. The second bail application preferred by the applicant was also rejected on 22.11.202 in Crl. Misc. Bail Application No.4442 of 2022 where this Court had noticed that there is no changed circumstances wherein the Court can enlarge the applicant on bail.

4. In the present third bail application the only ground urged by learned counsel for the accused-applicant is that the accused has been languishing in jail for last five years and four months and in the trial only 10 witnesses out of 20 have been examined and there is no likelihood of the trial being concluded anytime soon.

4. It is submitted that right to speedy trial is a fundamental right. He has relied upon the judgment of Supreme Court in the case of ***Union of India Vs. K.A. Najeeb, AIR 2021 Supreme Court 712*** where Supreme Court has held that where a trial is unlikely to be concluded in near future would be a good ground for grant of bail.

5. Learned counsel for the opposite parties have vehemently

opposed the bail. They have submitted that gravity of the offence is such where two minor children have been murdered in gruesome manner and there is impleadment of the applicant in as much as witness has seen the applicant entering into the said premises and accordingly it cannot be denied that there is no evidence with regard to impleadment of the applicant to the said offence and submit that it is in these circumstances that the bail application deserves to be rejected.

6. I have heard learned counsel for the parties and perused the record.

7. The allegation against the applicant is that he has murdered two minor children of the complainant to which charge sheet was filed subsequent to lodging of the first information report and after recording the statement under Section 161 of Cr.P.C. of Himanshu Mishra, a neighbor of the victim who was washing his motorcycle when he saw the applicant entering into the house of the complainant subsequent to which it was revealed that two minor children have been murdered. It has also been brought on record that the blood stained clothes was recovered from the applicant.

8. The first bail application was rejected sometime in 2021 and the present third bail application has been preferred only on the ground that the applicant is in jail for last five years and four months which is substantially long length of time and considering the fact that only 10 out of a total of 20 witnesses have been examined there is no likelihood of the conclusion of the trial anytime soon.

9. In the circumstances when a person is entitled to bail after a long incarceration has been dealt with by Supreme Court in the case of ***Sheikh Javed Iqbal @Ashfaq Ansari @ Javed Ansari Vs. State of U.P., 2024 SCC OnLine SC 1755*** wherein it has been held as under:

"22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.

30.1. Thereafter, this Court held as follows:

7.1. We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21. The Courts must show restraint while imposing bail conditions. Therefore, while granting bail, the Courts can curtail the freedom of the accused only to the extent required for imposing the bail conditions warranted by law. Bail conditions cannot be so onerous as to frustrate the order of bail itself.

For example, the Court may impose a condition of periodically reporting to the police station/Court or not travelling abroad without prior permission. Where circumstances require, the Court may impose a condition restraining an accused from entering a particular area to protect the prosecution witnesses or the victims. But the Court cannot impose a condition on the accused to keep the Police constantly informed about his movement from one place to another. The object of the bail condition cannot be to keep a constant vigil on the movements of the accused enlarged on bail.

The investigating agency cannot be permitted to continuously peep into the private life of the accused enlarged on bail, by imposing arbitrary conditions since that will violate the right of privacy of the accused, as guaranteed by Article 21. If a constant vigil is kept on every movement of the accused released on bail by the use of technology or otherwise, it will infringe the rights of the accused guaranteed under Article 21, including the right to privacy. The reason is that the effect of keeping such constant vigil on the accused by imposing drastic bail conditions will amount to keeping the accused in some kind of confinement even after he is released on bail. Such a condition cannot be a condition of bail.

9. A condition cannot be imposed while granting bail which is impossible for the accused to comply with. If such a condition is imposed, it will deprive an accused of bail, though he is otherwise entitled to it..."

10. Despite the fact that the allegations are grave but the overriding fact which weighs the mind of the Court is with regard to fundamental right of the applicant for speedy trial, who has already suffered incarceration for five year and four months and despite the orders having been passed by this Court for expeditious disposal of his trial while rejecting the second bail application on 22.11.2022 the trial is still pending. Considering that the applicant is in jail for last five years and

four months which is substantially long length of time and also considering the fact that only 10 out of a total of 20 witnesses have been examined it is clear that there is no likelihood of the conclusion of the trial anytime soon.

11. In light of the above, this Court is of the considered opinion that the applicant is entitled to be released on bail. The application is accordingly **allowed**.

12. Let applicant Shubhankit Shukla @ Golu involved in Case Crime No. 212 of 2019 under Sections 302, 393, 34 IPC, police station Kotwali Ganga Ghat, District Unnao be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:

1. The applicant will not tamper with the evidence during the trial.

2. The applicant will not pressurize/ intimidate the prosecution witness.

3. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

4. The applicant shall not commit an offence similar to the offence of which she is accused, or suspected, of the commission of which she is suspected.

5. 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 her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail.

(Alok Mathur, J.)

Order Date :- 13.8.2024
RKM.