

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12549 of 2023

Applicant :- Pradeep Kumar Prajapati

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lucknow

Counsel for Applicant :- Prashant Dubey, Anand Dubey, Vidhi Pandya

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh, J.

1. Heard Sri Anand Dubey, learned counsel for the applicant, Sri Nirmal Kumar Pandey, learned AGA for the State and perused the material placed on record.
2. The instant fourth bail application has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 673 of 2020, under Section 304 of IPC, P.S. Kotwali Nagar, District Faizabad/Ayodhya.
3. As per the prosecution story, it is alleged that on 10.10.2020 at about 3:00am, the care taker namely Satya Prakash Tiwary of the Government Juvenile Shelter Home, Ayodhya informed through phone that juvenile Ravi @ Akash Guar was seriously ill and he was taken to District Hospital. The enquiry was conducted by District Probation Officer and it was found that the applicant alongwith the juvenile Mohit Rawat assaulted the juvenile Ravi @ Akash Gaur with danda, kicks and fists and thereafter, when he had taken meal, he felt pain in his stomach whereafter, primary aid was provided, but once there was no relief, he was taken to hospital wherein, the Doctor declared him dead.
4. The contention of counsel for the applicant is that the incident is alleged to have taken place on 10.10.2020 at about 3:00 am when the care taker Satya Prakash Tiwary informed that juvenile Ravi @ Akash Gaur is seriously ill and the first information report was lodged on 12.10.2020 at 11:11 am at Police Station- Kotwali Nagar, District-Ayodhya by the complainant Krishna Bhagwan Mishra Officer-In-Charge State Juvenile Shelter Home whereas, fact remains that the Police Station is about 500 metres from the shelter home and delay is not explained, even prior to that, on 11.10.2020. The Medical Officer, District Hospital Ayodhya had informed to the S.H.O. Kotwali Nagar regarding admission of individual deceased as a case of brought dead. He submits that as per the inquiry conducted on 11.10.2020 by the District Probation Officer, Ayodhya, it

has been stated that the deceased was assaulted by kicks and fists, but in the inquest report as well as in the Post Mortem Examination report, the date of death could not be ascertained, contrary ten ante-mortem injuries were found on the body of the deceased and so far as the recovery memo of bamboo-danda which is said to be used as a weapon, in assault, is not shown in the recovery memo prepared by the Investigating Officer. He also submitted that at the belated stage, on 2.11.2020, the statements of the then Care Taker of Shelter Home, namely Satya Prakash Tiwary and one Rajit Ram was also recorded wherein, they have assigned the role to the applicant by way of making false allegations against him whereas, the fact remains that they are not the eye witnesses of the alleged incident.

5. Learned counsel for the applicant has emphasized that as per the postmortem report, there are simple injuries on the body of the deceased however, the cause of death could not be ascertained and as a result, the viscera was preserved and subsequently, when the FSL report came, no poisonous substance was found from the viscera preserved and therefore, Viscera/FSL report do not support the version of the prosecution.

6. Adding his arguments, he submits that the complainant is not eye witness and the statement of the juveniles of the concerned shelter home was recorded inside the shelter home under the influence and pressure of the care takers namely Satya Prakash Tiwari and Raji Ram, who with view to save themselves, shifted their criminal liability upon the applicant. He urged that in fact the deceased died for some other reasons though, the same could not be ascertained even by the doctors and prima facie, the story of prosecution is apparently baseless and concocted.

7. He has further emphasized that the statement of P.W.-1 Krishna Bhagwan Mishra was recorded by the trial court which do not give any strength to the charges levelled against the present applicant and at the same time, the statement of the P.W.-2 namely, Satya Prakash Tiwari has demolished the story of prosecution as he stated that the applicant went away after he took over the charge and he found that all the juveniles/inmates were sleeping and such statement clearly indicates that the applicant was not on duty, when the incident is alleged to have taken place and it seems that the same happened thereafter. He added that the applicant is in jail since about last four years and the allegation against the applicant is under section 304 of IPC and the maximum punishment provided is of ten years.

8. He further argued that the applicant has been victimized as there is no overt motive or intention as there was no prior dispute of any kind between the applicant and the deceased. He also submitted that the applicant has no previous criminal antecedent and he is a law abiding citizen and is languishing in jail since 14.10.2020. He has also drawn attention, that while dismissing the second bail application in the Criminal Misc. Bail Application No. 6953 of 2022 on 10.10.2022, this Court directed the trial court to conclude the trial within a period of eight months and once the same was not concluded, again the third bail application was moved bearing Criminal Misc. Bail Application No. 8529 of 2023 which was also dismissed on 7.7.2023 while directing the trial court to conclude the trial proceedings within a period of six months, but even passing of about one year, after the repeated direction of this Court, the trial is still pending.

9. In support of his contention he has placed reliance on a judgement rendered in the case of **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another** passed in **Criminal Appeal No. 2787 of 2024** and has referred paragraph 10. Paragraph 10 of the abovesaid judgement is quoted hereinunder:-

*"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."

10. Referring the above, he submitted that the Apex Court has held 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. He has also drawn attention towards observations that a valid procedure under Article 21 is one, which contains a procedure that is "reasonable, fair and just" and the right to liberty and life is paramount consideration for grant of bail.

11. Concluding his arguments, he submits that the applicant was never involved in any criminal activity as there is no previous criminal antecedents and he undertakes that he will always make himself available before the trial court, as and when required and would never jump the bail, if granted. Thus, submission is that the applicant may be enlarged on bail.

12. Per contra, the learned counsel appearing for the State has opposed the contentions aforesaid and submitted that there are serious allegation against the applicant and after thorough investigation, it was found that he was involved in committing offence. He further submits that in fact, the applicant was on duty on the date when the incident took place and after recording the statement of the witnesses, Investigating Officer reached to the conclusion that the applicant was involved in committing offence. He added that the trial is about to be concluded and the bail application of the applicant has been rejected two times and there is no new ground at all, and therefore, he is not entitled for any relief.

13. Having heard the learned counsel for the parties and after perusal of the material placed on record, it transpires that the applicant is in jail since last four years and out of 33 witnesses, only eight have been examined, and it is expected that the trial will take more considerable period of time to conclude the trial proceedings.

14. This Court while passing the order in the second bail application as well as in third bail application of the applicant, directed the trial court to conclude the trial proceeding within eight and six months, respectively, but admittedly the same has not been concluded as yet. The long settled concept of bail is altogether different than the theory of punishment as bail can be refused on the ground that the accused shall tamper with the evidences, would threaten the witnesses or would not cooperate in the trial proceedings whereas, the concept of punishment is based on various theories like punitive, reformative etc.

15. It is apt to discuss the distinct concept of punishment in the arena of criminal justice system. There are several theories of punishment evolved over a period of time and some of those like retributive, reformative, rehabilitative etc, but what is most acceptable theory at this time in all over the world including India, is the reformative theory of punishment. The saying by Mahatma Gandhi is the crux of the reformative theory which is quoted hereinunder:-

“An eye for an eye will turn the whole world blind”

16. The reformative theory in the deterrent form implied that the offender recognized his guilt and wished to change him. In other words, the very aim and object is to rehabilitate the offender to the acceptable norms of the society and changed him to a law abiding citizen and therefore, this theory deprecates all kinds of rigorous punishments which in other terms leads to Revenge and that

goes to an un-ending result. In fact the reformation is an object to recognize the inherent dignity and rights of offenders, even they have committed crimes. Further the offenders are afforded their fundamental human rights, as time and again, the law codified by the various countries of the world, in a slow growing process, but ultimately that is a well-recognized system of law.

17. In light of the gradual developments of the abovesaid concept of punishment, the Hon'ble Supreme Court has repeatedly held that an under trial prisoner is also entitled for the rights enshrined under article 21 of Constitution of India and therefore, right to speedy trial of an under trial prisoner also comes under the ambit and scope of article 21.

18. The Hon'ble Apex Court in the case of **State of Rajasthan, Jaipur vs Balchand @ Baliay, (1977 4SCC 308)** has held as follows:-

"The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative."

19. The essence of the aforesaid judgment is that the basic rule of criminal justice system is bail, not jail and in other words it can be understood as the bail is a rule and jail is an exception.

20. The Hon'ble Apex Court in case of **Moti Ram and Others Vs. State of Madhya Pradesh, (1978) 4 SCC 47** has observed in paragraph 14 as under:-

"14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family."

21. In the above-said judgment, it has been emphasized that there are far reaching consequences as a presumed innocent has to face psychological and physical deprivation of life and he does not only lose the proper opportunity of preparation of his defense, but the innocent family members face hardship. Apart from above, the preparation for defense by such accused also hampers.

22. The above-said law has been reiterated in the cases of **Gudikanti Narasimhulu and others v. Public Prosecutor, High Court of Andhra Pradesh, (1978) 1 SCC 240**; **Akhtari BI (Smt) v. State of M.P., (2001) 4 SCC 355**; **Sanjay Chandra v. CBI, Criminal Appeal No.2178 of 2011 (arising out**

of SLP (Crl.) No.5650 of 2011) and other; Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694; Gokarakonda Naga Saibaba v. State of Maharashtra, (2018) 12 SCC 505; Arnab Manoranjan Goswami v. The State of Maharashtra & Ors., Criminal Appeal No.742 of 2020 (Arising out of SLP (Crl) No.5598 of 2020; Union of India Vs. K.A. Najeeb, 2021 3 SCC 719.

23. Hon'ble Apex Court, time and again, has spoken in so many words, where the right to life and liberty was being infringed. For example the inordinate delay in conclusion of trials of the under trial prisoners, recently, the Apex Court in case of **Sheikh Javed Iqbal @ Ashfaq Anari @ Javed Ansari Vs. State of U.P, in Criminal Appeal No. 2790 of 2024** has held that constitutional Courts 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. Paragraph 32 of the abovesaid judgement is reproduced hereinunder:-

"32. 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 three Judge Bench is binding on a Bench of two Judges like us."

24. Most recently, the Hon'ble Apex Court in the case of **Manish Sisodia vs Directorate of Enforcement in SLP (Criminal) No. 8781 of 2024** has held as follows:-

"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".

54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind

the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.”

25. The Hon’ble Apex Court has reiterated that an under trial prisoner/accused cannot be put behind the bars for indefinite period of time, hoping for speedy completion of trial as the same would infringe the fundamental rights to liberty under article 21 of the Constitution of India.

26. The scenario of the present case is that the first information report was lodged in the month of October, 2020 and the applicant is in jail since 14.10.2020. The fact remains that there are thirty-three witnesses out of them, only eight witnesses have been produced and examined. This Court while rejecting the second and third bail applications of the applicant, directed the trial court to complete the trial proceedings, while fixing a particular period of time, even then the same has not been concluded and the trial is running in snails motion and therefore, there is no hitch to draw inference that the conclusion of trial would take more considerable period of time resulted into hampering the object of rehabilitating the applicant as the reformed member of the society coupled with the fact that the innocent family of the applicant would felt pain and agony for their no fault.

27. Repeatedly, the Apex Court has settled the law that speedy trial is the fundamental right of an under trial prisoner and he is entitled for the same and further the prolonged incarceration prior to hold the accused guilty of an offence is amount to punishment, without any trial and therefore, infringement of right to liberty provided under article 21 of the Constitution of India is impermissible.

28. So far as the case in hand is, the same is one of the glaring example, wherein, there is a remotest possibility of conclusion of trial in the near future and in this sense, it could be firmly said that the liberty of the applicant is being curtailed because of a delayed trial in the matter.

29. In view of the above-said submissions and discussions and considering the facts and circumstances of the case, coupled with the settled proposition of law, it persuaded this Court to be it a fit case for bail.

30. Let the applicant **Pradeep Kumar Prajapati** involved in the aforementioned crime be released on bail, 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:-

- (1) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, or otherwise during the investigation or trial;
- (2) 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. He 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;
- (3) 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.; and
- (4) 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, the trial court shall initiate proceedings against him, in accordance with law under Section 174-A of the Indian Penal Code.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the merits of the case.

Order Date :- 18.7.2024

Anurag/Mayank