

Neutral Citation No. - 2024:AHC-LKO:59511

Reserved on 23.08.2024

Delivered on 30.08.2024

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13117 of 2023

Applicant :- Gayatri Prasad Prajapati

Opposite Party :- State Of U.P Thru. Prin. Secy. Home Civil Sect.
Govt. Lko.

Counsel for Applicant :- Arun Sinha, Naved Ali, Ram Chandra
Singh, Sandeep Yadav, Siddhartha Sinha, Umang Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Arun Sinha, learned Advocate assisted by Sri Siddharth Sinha, learned counsel for the applicant, Sri V. K. Shahi, learned Additional Advocate General of U.P. assisted by Sri Anurag Varma, learned Additional Government Advocate-I and Sri Ajeet Singh Gaharwar, learned State Counsel.
2. Sri Arun Sinha, learned counsel for the applicant has filed written submissions on behalf of the applicant. The same is taken on record.
3. Sri V.K. Shahi, learned Additional Advocate General has already filed his written submissions and has provided the photocopy of the order-sheet of the learned Trial Court on 26.07.2024.
4. As per learned counsel for the applicant, the present applicant (Gayatri Prasad Prajapati) is languishing in jail since 11.09.2020 in Crime No./FIR No.537 of 2020, under Sections 420, 467, 468, 471, 506, 386, 388 and 120-B I.P.C., Police Station-Ghazipur, District-Lucknow.
5. Sri Sinha, learned counsel for the applicant has submitted that the present applicant has been falsely implicated as he has not committed any offence as alleged in the prosecution story. Further, the applicant has been implicated in the present case invoking the provisions of Section 120-B I.P.C. inasmuch as the prosecution is having no material

or evidence showing the culpability of the applicant under Sections 420, 467, 468, 471, 506, 386, 388 and 120-B I.P.C.

6. Learned counsel for the applicant has stated that in the crime in question the present applicant has been granted bail by the learned trial court on 14.07.2021 (Annexure No.1), though the State of U.P. has filed the bail cancellation application bearing Criminal Misc. Bail Cancellation Application No.9490 of 2021; State of U.P vs. Gayatri Prasad Prajapati; seeking setting aside the order dated 14.07.2021 (supra).

7. Notably, the present applicant was granted bail by the learned trial court vide order dated 30.07.2021 in F.I.R./ Crime No.163 of 2020, under Sections 506, 386, 388, 419, 420, 467, 468, 471 & 120-B I.P.C., Police Station-Gomti Nagar Vistar, District-Lucknow and against that order the another Criminal Misc. Bail Cancellation Application No.9009 of 2021 was filed by the State. Both the aforesaid bail cancellation applications were clubbed together and decided by this Court vide order dated 28.11.2022 cancelling both the aforesaid bail orders remanding back the matter to the learned trial court to consider a fresh in accordance with law. Mainly, the grounds seeking cancellation of bail orders were that the applicant had deliberately and intentionally concealed his vast criminal history.

8. In para-46 of the present bail application, the applicant has indicated his criminal history of ten cases and in subsequent paras i.e. from paras-49 to 55 those criminal history have been explained.

9. Sri Arun Sinha, learned counsel for the applicant has stated with vehemence that the applicant had nothing to do with the properties sold out to Ms. Savita Pathak. He has also submitted that 04 sale deeds executed by Sri Mukesh Kumar, Sri Prashant Singh Sengar, Sri Angrej Singh and Sri Brij Bhawan Chaubey in favour of the co-accused Ms.

Savita Pathak. All the aforesaid persons are not associated with the present applicant and only for the reason that some of those persons have stated that they have executed the aforesaid sale-deeds in favour of co-accused Ms. Savita Pathak at the behest of the present applicant and had not received any money from the purchaser i.e. the co-accused Ms. Savita Pathak. He has further submitted that the allegation of benami transactions so levelled against the present applicant does not constitute any offence under Sections 420, 467, 468, 471, 506, 386, 388 and 120-B I.P.C. The complainant of the F.I.R. is an Advocate of co-accused Ms. Savita Pathak and he has no locus to lodge an F.I.R. against the present applicant. As a matter of fact, the entire F.I.R. is not only false and misconceived but the same is concocted also.

10. Sri Sinha has submitted with vehemence that in the present case after conclusion of the investigation the charge-sheet has been filed on 15.10.2020, since then the charges have not been framed against the present applicant and he is languishing in jail for about four years without even initiation of trial proceedings which violates the fundamental right of speedy trial of the applicant as enshrined under Article 21 of the Constitution of India.

11. In support of his aforesaid submission Sri Arun Sinha has drawn attention of this Court towards the dictum of Apex Court rendered in the cases in re: ***Union of India vs. K.A. Najeeb*** reported in ***(2021) 3 SCC 713 and Javed Gulam Nabi Shaikh vs. State of Maharashtra and another*** reported in ***2024 SCC OnLine SC 1693***.

12. Therefore, in view of the above, Sri Arun Sinha has submitted that the present applicant may be enlarged on bail and if he is released on bail, he shall abide by all terms and conditions of bail order and shall not misuse the liberty of bail and shall co-operate in the trial proceedings properly.

13. Per contra, Sri V.K. Shahi, learned Additional Advocate General of U.P. has opposed the prayer for bail of the present applicant by submitting that in one criminal case bearing Criminal Case No.29 of 2017, under Sections 376-D, 376, 511, 504 & 506 I.P.C. and Section 3/4 of Protection of Children from Sexual Offences Act, Police Station-Gautam Palli, District-Lucknow, Session Trial No.460 of 2017, the trial has been concluded vide judgment and order dated 12.11.2021 passed by the learned Session Court convicting the present applicant for life imprisonment with the fine of Rs.2,00,000/- (two lakhs).

14. Sri Shahi has further submitted that in view of the provisions of Section 437 (ii) Cr.P.C. the present applicant may not be released on bail. For convenience, Section 437 (ii) Cr.P.C. reads as under:-

"437: When bail may be taken in case of non-bailable offence. [(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but -

(i)...

(ii) such person shall not be so released if such offence is a cognisable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of [a cognisable offence punishable with imprisonment for three years or more but not less than seven years]:"

15. In support of his aforesaid submission Sri Shahi, learned Additional Advocate General has placed reliance upon the order of this Court dated **07.01.2014 passed in BAIL (SECOND) NO.4707 OF 2013; Laxman Prasad vs. State of U.P.** referring paras-9 to 13, which read as under:-

"9. Prime consideration before this Court is whether the provisions contained in Section 437 (1)(ii), CrPC would apply while deciding the bail under Section 439, CrPC by court of sessions or by High Court or not?

10. The aforesaid question is not *res integra*. While considering the aforesaid question, the Apex Court in paragraphs 13 and 14 in **Gurcharan Singh Vs. State (Delhi Admn.)**, (1978) 1 SCC 118 has observed as under:

"13. Mr Mulla drew our particular attention to some change in the language of Section 437(1) CrPC (new Code) compared with Section 497(1) of the old Code. Mr Mulla points out that while Section 497(1) CrPC of the old Code, in terms, refers to an accused being "brought before a Court", Section 437(1) CrPC uses the expression "brought before a Court other than the High Court or a Court of Session". From this, Mr Mulla submits that limitations with regard to the granting of bail laid down under Section 497(1) to the effect that the accused "shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life" are not in the way of the High Court or the Court of Session in dealing with bail under Section 439 of the new Code. It is, however, difficult to appreciate how the change in the language under Section 437(1) affects the true legal position. Under the new as well as the old Code an accused after being arrested is produced before the Court of a Magistrate. There is no provision in the Code whereby the accused is for the first time produced after initial arrest before the Court of Session or before the High Court. Section 437(1) CrPC, therefore, takes care of the situation arising out of an accused being arrested by the police and produced before a Magistrate. What has been the rule of production of accused person after arrest by the police under the old Code has been made explicitly clear in Section 437(1) of the new Code by excluding the High Court or the Court of Session.

14. From the above change of language it is difficult to reach a conclusion that the Sessions Judge or the High Court need not even bear in mind the guidelines which the Magistrate has necessarily to follow in considering bail of an accused. It is not possible to hold that the Sessions Judge or the High Court, certainly enjoying wide powers, will be oblivious of the considerations of the likelihood of the accused being guilty of an offence punishable with death or imprisonment for life. Since the Sessions Judge or the High Court will be

approached by an accused only after refusal of bail by the Magistrate, it is not possible to hold that the mandate of the law of bail under Section 437 CrPC for the Magistrate will be ignored by the High Court or by the Sessions Judge."

*11. So far as the question of previous conviction is concerned, while dealing with the said issue, the Apex Court in **Ram Pratap Yadav Vs. Mitra Sen Yadav, (2003) 1 SCC 15**, ruled in paragraph 7 as under:*

"7. The learned counsel for the appellant has submitted by inviting attention of the Court to the provisions of Section 437 CrPC that a person accused of or suspected of the commission of any non-bailable offence shall not be released on bail if he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for 7 years or more, unless special reasons for enlarging the accused on bail are available and recorded in writing. The learned counsel for Respondent 1 submitted that the powers of the Sessions Court and the High Court to enlarge the accused on bail under Section 439 CrPC are very wide and are not fettered by the provisions of Section 437 CrPC. Be that as it may, it cannot be denied that previous conviction of an accused for a heinous offence punishable with imprisonment for life, his involvement in other crimes and the quantum of punishment for the offences in which the applicant is seeking bail are all relevant factors to which the court should consciously advert to while taking a decision in the matter of enlargement on bail. A prayer for bail having been rejected by the Sessions Court although the High Court while exercising its jurisdiction under Section 439 CrPC is not acting as a court of appeal or a court of revision over the order of the Sessions Court, nevertheless, the High Court should keep in mind, while hearing the application for bail, the factum of the prayer having been rejected by the Sessions Court and the reasons therefore expressly set out in the order of the Sessions Court. The order of the High Court, howsoever brief it may be, should make it appear that the High Court while forming opinion on prayer for bail was conscious of the reasons for rejection of prayer for bail as assigned by the Sessions Court."

*12. In **Kalyan Chandra Sarkar Vs. Rajesh Ranjan, (2004) 7 SCC 528**, the Apex Court again considered the aforesaid aspect in paragraph 14, which reads as under:*

"14. This Court also in specific terms held that the condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

13. In view of the aforesaid decisions of Highest Court of this Country and discussions made thereinabove, it is crystal clear that the provisions contained in Section 437, CrPC will fully apply while considering the bail application either by court of sessions or by High Court. The fact that the applicant is a previous convict and has been released on bail in appeal is not in dispute but nothing has been brought on record on behalf of the applicant that his conviction was also suspended. Ordinarily, the punishment awarded after conviction is suspended while granting the bail to the accused persons during appeal, therefore, it cannot be said that the applicant is not a previous convict."

16. On the basis of the aforesaid settled proposition of law, Sri Shahi has submitted that since the present applicant has been convicted for life imprisonment so in view of the specific bar prescribed under Section 437 (ii) Cr.P.C., which would be applicable in the bail application considering by the High Court under Section 439 Cr.P.C., the present applicant should not be released on bail.

17. However, Sri Sinha has disputed the aforesaid submission of Sri Shahi by submitting that so as to appreciate the embargo of Section 437 (i) & (ii) Cr.P.C., the accused person should have been convicted on the date of commission of an offence of which the bail is being considered but the applicant was not convicted on the date of commission of an offence which has allegedly been committed with effect from 01.08.2018 to 17.09.2019 when four different sale deeds have been executed in favour of Ms. Savita Pathak and he was convicted on 22.11.2021.

18. Heard learned counsel for the parties and perused the material available on record.

19. At the very outset, I am expressing my anguish on the point that about three years and ten months period have passed after filing the charge-sheet in the present case but the charge/ charges has/ have not been framed till date. I am unable to comprehend the fact that in the present case the offence/ offences is/ are triable by the Magistrate Ist Class and the learned trial court is having coercive powers to seek the appearance of the accused persons to frame the charge/ charges but no such exercise has been undertaken, resultant thereof, the present applicant is in jail/ judicial custody for about four years. The Apex Court has held time and again that the accused person is having fundamental right of speedy trial under Article 21 of the Constitution of India and if there is inordinate delay to conclude the trial and if pace of trial is very casual and slow, then the accused person may be enlarged on bail. The facts of the present case are one step ahead where the trial has not been initiated as yet inasmuch as the trial is initiated only after framing of charge/ charges against the accused person but the present applicant is in jail/ judicial custody for about four years without initiation of trial.

20. It would be apt to reproduce para-15 of the dictum of ***K.A. Najeeb (supra)***:-

“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, 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.”

21. The Apex Court in the case in re: **Javed Gulam Nabi Shaikh (supra)** in its own judgment rendered in in re: **K. A. Najeeb (supra)** has observed in paras-12, 14, 19, 20 and 21, which read as under:-

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.”

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."

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.

22. Besides, applying the embargo of Section 437 (1) (ii) Cr.P.C. the accused person must have been convicted on the date of commission of offence of which the bail is being considered and in the present case the offence has been allegedly committed by the applicant with effect from 01.08.2018 to 17.09.2019 whereas he has been convicted in Session Trial No.460 of 2017 (supra) on 12.11.2021. Therefore, such embargo may not be attracted in the present case.

23. Sri V.K. Shahi, learned Additional Advocate General has vehemently submitted that the mere long incarceration and delay in progress in trial is by itself not sufficient ground to grant concession of bail to an accused person citing the decision of Apex Court in the case in re: ***Chandra Shekhar Prasad alias Chandu Babu vs. State of Bihar and another reported in (2016) 9 SCC 443.*** But in the present case, in last about four years the trial has not been initiated as on today, for trial is initiated after framing of charges against accused person but in the present case such exercise has not been undertaken till date, therefore the aforesaid submission of Sri Shahi may not be accepted in view of the facts and circumstances of the present case.

24. Sri Shahi has further informed that pursuant to the conviction order dated 12.11.2021 the present applicant is in jail and his criminal appeal as well as bail application is pending consideration before the Appellate Court.

25. So far as the other factors which should be considered while granting bail i.e. (I) nature of seriousness of offence; (ii) character of the evidence and circumstances which are peculiar to the accused; (iii) likelihood of accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact of the society; and likelihood of tampering the witnesses are concerned, I am of the view that such conditions may be met out after imposing strong conditions if the bail application of the applicant is considered in his favour.

26. Notably, without commencing the trial the applicant has served about four years imprisonment which is almost half in most of the sections under which the trial would be commenced. Therefore, this may also be one of the grounds to consider the bail application in favour of the applicant.

27. Hence, considering the dictum of Apex Court in the cases in re: **K.A. Najeeb** (supra) and **Javed Gulam Nabi Shaikh** (supra), the fact that the present applicant is in jail/ judicial custody for about four years; no charges have been framed as yet after filing the charge-sheet on 15.10.2020; and his undertaking that if he is released on bail he shall abide by all terms and conditions of bail order and shall not misuse the liberty of bail and shall cooperate in the trial proceedings properly, I find that the present applicant may be enlarged on bail.

28. Accordingly, the instant bail application is ***allowed***.

29. Let the applicant (Gayatri Prasad Prajapati)) be released on bail in the aforesaid case crime number on his furnishing a personal bond of Rs.5,00,000/- and two sureties of Rs.2,50,000/- each to the court concerned with the following conditions, which are being imposed in the interest of justice:-

(i) 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. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) 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.

(iii) 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, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) 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. The present applicant shall not leave the country without prior permission of the Court.

30. It is further directed that after release from the jail the present applicant shall mark his attendance at the Police Station-Ghazipur, Lucknow on 10th day of each month and the Station House Officer of Police Station concerned shall mark the attendance of the present applicant and shall watch the conduct of the applicant and if at any time the prosecution finds that the present applicant is violating any of the above conditions of bail order or his conduct is such which compels the prosecution to file a bail cancellation application before this Court, such application may be filed by the prosecution before the court concerned.

31. Before parting with, the learned trial court is directed to expedite the trial after the framing of the charges and if any of the witnesses does not co-operate in the trial proceedings properly, the appropriate coercive steps which are permissible under the law may be taken so that the trial could be concluded with expedition.

[Rajesh Singh Chauhan,J.]

Order Date :- August 30th, 2024.
Suresh/