

Court No. - 78

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6768 of 2025

Applicant :- Kuldeep

Opposite Party :- State of U.P.

Counsel for Applicant :- Arvind Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Arvind Kumar, learned counsel for the applicant, Sri Ajay Singh, learned AGA-I for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant **Kuldeep**, seeking enlargement on bail during trial in connection with Case Crime No. 0040 of 2020, under Sections 498-A, 323, 304-B, 302, 120-B IPC and 3/4 D.P. Act, registered at P.S. Bichhwa, District Mainpuri.
4. The facts of the case are that a First Information Report was lodged on 04.03.2020 by Raj Kishore against Vipin/husband, Dhan Devi/mother-in-law, Pushpendra/father-in-law, Kuldeep, Rohit, Ragini, Avanish and Vijay Singh with the allegation that Anju the daughter of the first informant aged about 21 years was married to Vipin Kumar on 10th June, 2018. After marriage, the accused persons were not satisfied with the gifts and dowry due to which they used to assault her for additional dowry regularly and used to tell her that her father has not given anything and there was a demand of dowry but his daughter was consoled by them many times for the reason that her family life may not get disturbed. Her in-laws were also consoled but the accused persons continuously demanded dowry and there was a demand of a car and Rs. 5 lakhs cash regularly due to which his wife Sukh Devi went to daughter's matrimonial house on 03.03.2020 and talked to them and stayed there. In the night, his wife Sukh Devi and daughter Anju were sleeping on the first floor wherein Kuldeep along with his family members Pushpendra, Dhan Devi and Ragini came there with knife and hasia and assaulted his wife and daughter and committed

murder at about 12:00 am, information of which received by him from the police station. He then reached the place of occurrence and lodged the FIR. Pradeep Kumar is the scribe of the report.

5. The postmortem examination of Smt. Anju was conducted on 04.03.2020 in which the doctor found 8 incised wounds on her body and the cause of death was opined as hemorrhagic shock due to ante-mortem injuries. The postmortem examination of Smt. Sukh Devi was conducted on 04.03.2020 in which the doctor found 14 incised wounds on her body and the cause of death was opined hemorrhagic shock due to ante-mortem injuries. The investigation concluded and a charge sheet dated 26.05.2020 was submitted against Dhan Devi/mother-in-law, Pushpendra/father-in-law, Kuldeep (the present applicant) and Avanish under Sections 498-A, 323, 304-B, 302, 120-B IPC and 3/4 D.P. Act.

6. Learned counsel for the applicant submits fairly that although this Court had granted bail to co-accused Rohit vide order dated 04.12.2021 passed in Crl. Misc. Bail Application No. 47989 of 2021 (Rohit Vs. State of U.P.) but his case was distinguished with that of co-accused Kuldeep, Pushpendra, Dhan Devi, Ragini, the said order is annexed as annexure 7 and is at page 92 of the paper book. It is next submitted that the applicant has been falsely implicated in the present case. It is submitted that after the grant of bail to co-accused Rohit, Vipin and Pushpendra have been granted bail by a common order dated 05.10.2023 passed in Crl. Misc. Bail Application No. 55819 of 2021 (Vipin Vs. State of U.P.), Crl. Misc. Bail Application No. 24361 of 2020 (Pushpendra Vs. State of U.P.), copy of which is annexed as annexure 7 and is at page 95 of the paper book. It is submitted that as such co-accused Pushpendra whose case was distinguished with that of co-accused Rohit has been granted bail by a co-ordinate Bench of this Court. It is submitted further that the trial in the present matter has started in which the statement of the first informant Raj Kishore has been recorded as PW-1 and that of Jagdish has been recorded as PW-2 and both the witnesses have not supported the prosecution case and have been declared hostile, copies of the said statements have been placed before the Court which are annexures 8 and 9 of the affidavit. It is submitted while placing para 6 and 8 of the order of Apex Court in the case of **Tapas Kumar Palit Vs. State of Chhattisgarh in Criminal Appeal No. 738 of 2025**, decided on 14.02.2025 that in so far as bail is concerned, the Apex Court considered the fact that the applicant has been in jail since last five years and there was no specification regarding the time of conclusion of trial and as such the said accused has been granted

bail. It is submitted that looking to the said fact the applicant who is having no criminal history as stated in para 39 of the affidavit and is in jail since 04.03.2020 be directed to be enlarged on bail.

7. Per contra, learned counsel for the State vehemently opposed the prayer for bail. It is submitted that in the present matter two persons have lost their lives and the prosecution version is specific with regards to four accused persons including the applicant assaulted both the deceased with sharp edged weapon and the injuries corroborate with the prosecution version. It is further submitted that the trial in the present matter is under progress in which two witnesses have been examined. Raj Kishore was initially examined on 18.08.2021 and further on 21.07.2022 on which he supported the prosecution case. His cross examination was recorded on 20.09.2023 and 31.08.2024 in which also he supported the prosecution case. Subsequently on 07.10.2024 he was declared hostile. It is submitted that this Court has while granting bail co-accused Rohit distinguished the case of the applicant, co-accused Pushpendra, Dhan Devi and Ragini with that of the said accused. It is further submitted that in so far as the distinction of the case of the applicant with the co-accused are concerned, the same is specifically mentioned in the said order. It is further submitted that looking to the facts that the trial in the present matter is going on and the first informant had initially supported the prosecution case but after a substantial period of time, he did not support the prosecution case, there appears to be tampering with evidence. It is further submitted that there are even other witnesses who are yet to be examined in trial and as such drawing a conclusion only on the basis of two statements recorded in the trial at this stage would not be proper. It is submitted that in so far as the statement of PW-1 is concerned, the same is to be considered by the trial court at the appropriate stage since initially he had supported the prosecution case but at a later stage, he was declared hostile. It is submitted that the prayer for bail be rejected.

8. After having heard learned counsels for the parties and perusing the records, it is evident that co-accused Rohit has been granted bail by this Court vide order dated 04.12.2021. The said order reads as under:

"Heard Sri Amit Daga, learned counsel for the applicant and Sri Pankaj Mishra, learned counsel for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Rohit, seeking enlargement on bail during trial in connection with Case Crime No. 0040 of 2020, under Sections 498-A, 323, 304-B, 302, 120-B I.P.C. and 3/4 Dowry Prohibition Act, registered at Police Station Bichhwan, District Mainpuri.

Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that in the present matter, two persons namely Smt. Anju wife of Vipin Kumar, Smt. Sukhdevi mother of Smt. Anju have died. It is argued that even in the first information report although the applicant along with seven other persons are named but there is a recital that co-accused Kuldeep along with Pushpendra, Dhandevi and Ragini assaulted both the deceased with knife and hasiya due to which they died. It is argued that the applicant is the jeth of Smt. Anju. It is further argued that there is no eye-witness to the murder. Learned counsel has argued that co-accused Avnish Kumar who is the cousin of Vipin Kumar, has been granted bail by a co-ordinate Bench of this Court vide order dated 17.09.2020 passed in Criminal Misc. Bail Application No. 23692 of 2020. Further co-accused Vijay Singh, the father-in-law of the applicant has also been granted bail by a co-ordinate Bench of this Court vide order dated 05.11.2020 passed in Criminal Misc. Bail Application No. 31236 of 2020 and Smt. Ragini who is the jethani of the deceased and wife of the applicant has been granted bail by a co-ordinate Bench of this Court vide order dated 03.08.2021 passed in Criminal Misc. Bail Application No. 34280 of 2020. The said orders are collectively annexed as Annexure-16 to the affidavit. Vipin Kumar the husband of one of the deceased Smt. Anju is in jail.

Learned counsel for the applicant further argued that on the day of incident co-accused Kuldeep was arrested by the police from the place of occurrence for which a first information report has been lodged as Case Crime No. 41 of 2020, under Sections 4 and 25 Arms Act and was found to be wearing blood stained clothes and there was recovery of a weapon used in the commission of the crime on his pointing out. The applicant is working in the Indian Army as stated in paragraph 31 of the affidavit. It is argued while placing paragraph 37 that there is no recovery of any incriminating material either from the pointing out or from the possession of the applicant. The applicant has no criminal history as stated in para 44 and is in jail since 06.09.2021.

Per contra, learned counsel for the State opposed the prayer for bail and argued that the applicant is named in the first information report but could not dispute the other arguments as raised.

After having heard the learned counsel for the parties and perusing the record, it is evident that the applicant is the jeth of one of the deceased Smt. Anju. There is no eye-witness to the murder. In the first information report, the role has been assigned to co-accused Kuldeep, Pushpendra, Dhandevi and Ragini of assaulting the deceased. Co-accused Avnish Kumar, Vijay Singh and Smt. Ragini have been granted bail by co-ordinate Benches of this Court.

The case of the applicant is distinguishable with that of co-accused Kuldeep, Pushpendra, Dhandevi and Ragini.

Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

Let the applicant- Rohit, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever.

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., may be issued and if 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 I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

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

The bail application is allowed."

9. While considering the case of the said accused, a distinction was drawn with regards to co-accused Kuldeep (the present applicant), Pushpendra, Smt. Dhan Devi and Ragini. Co-accused Pushpendra has although been granted bail by a co-ordinate Bench of this Court vide order dated 05.10.2023 but the fact remains that the role of the applicant has been distinguished. The order of co-accused Vipin and Pushpendra being a common order dated 05.10.2023 reads as under:

"Heard Mr. Amit Daga along with Mr. Arvind Kumar, the learned counsel for applicants Vipin and Pushpendra, the learned A.G.A. for State and Mr. Rajneesh Tripathi, the learned counsel representing first informant.

Counter affidavit has been filed by the learned A.G.A. in Criminal Misc. Bail Application No.24361 of 2020 today in Court, which is taken on record.

Mr. Siddharth Singh, Advocate has put in appearance on behalf of first informant by filing his Vakalanatnama in Court today in Criminal Misc. Bail Application No.24361 of 2020, which is taken on record.

These applications for bail have been filed by applicants Vipin and Pushpendra seeking their enlargement on bail in Case Crime No.40 of 2020, under Sections 498-A, 304-B, 323, 302, 120-B IPC and Section 3/4 Dowry Prohibition Act, police station Bichhwan, district Mainpuri, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 03.03.2020, a delayed first information report dated 04.03.2020 was lodged by first informant, namely, Raj Kishore (father/husband of the deceased), which was registered as Case Crime No.0040 of 2020, under Sections 498-A, 323, 304-B, 302 IPC and Section 3/4 Dowry Prohibition Act, police station Bichhwan, district Mainpuri. In the aforesaid FIR, eight persons, namely, Vipin Kumar (husband); Dhan Devi (mother-in-law); Pushpendra (father-in-law); Kuldeep; Rohit; Ragini; Avnish and Vijay Singh have been nominated as named accused.

The gravamen of the allegations made in the first information report is to the effect that

marriage of Anju (daughter of the first informant) was solemnized with Vipin Kumar (son of Pushpendra-applicant in Bail Application No.24361 of 2020) on 10.06.2018. However, son-in-law of the first informant and his family members were dissatisfied with the goods and dowry given at the time of marriage. Thereafter, demand of additional dowry was made but as demand of additional dowry was not fulfilled, physical and mental cruelty was committed upon the daughter of first informant. The mother of deceased (wife of first informant) had gone to marital home of her daughter. In the night of 03.03.2020, the wife as well as daughter of first informant both were murdered by the named accused.

After above-mentioned first information report was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. Thereafter, inquest (Panchayatnama) of both the deceased were conducted. In the opinion of the witnesses of inquest (Panch witnesses), the nature of death of the deceased were characterized as homicidal and the cause of death of the deceased was said to be due to ante-mortem injuries. Subsequent to above, the post-mortem of the body of the deceased were conducted. In the opinion of autopsy surgeon, who conducted autopsy of the body of deceased, cause of death of both the deceased was hemorrhagic shock as a result of ante-mortem injuries.

The autopsy surgeon found following ante-mortem injuries on the body of deceased-Anju :-

"Ante-mortem Injuries :-

1. Incised wound size 3 x 2 cm & deep present below angle of right mandible.
2. Incised wound size 13 x 4 cm & deep present over right cheek.
3. Incised wound size 5 x 2 cm & deep to bone in front chin.
4. Incised wound size 10 x 2 cm present below base of right mandible.
5. Incised wound size 5 x 2 cm present over right side of neck.
6. Incised wound size 2 x 2 cm in numbers present right of neck.
7. Incised wound size 4 x 1 cm & deep present sub mental region.
8. Incised wound size 2 x 1 cm present base of left mandible."

With regard to deceased Sukh Devi, the autopsy surgeon found following ante-mortem injuries on her body :-

"Ante-mortem injuries :-

1. Incised wound size 3 x 1 cm present front of right axilla.
2. Incised wound size 4 x 2 cm present over right clavicle.
3. Incised wound size 3 x 1 cm present over back of right scapula.
4. Incised wound size 2 x 1 cm present over lower lip (lower lip tear and multiple teeth loose).
5. Incised wound size 3 x 1 cm present over right cheek.
6. Incised wound size 2 x 1 cm present over left sterno-clavicular joint.
7. Incised wound size 5 x 1 cm x 10 depth present in front of right ear.

8. Incised wound size 1 x 1 cm x 3 cm depth present over right side of neck.
9. Incised wound size 2 x 1 cm x 3 cm depth present over front of neck.
10. Incised wound size 2 x 1 cm present over base of right mandible.
11. Incised wound size 4 x 1 cm x 4 cm depth present over back of neck upper side.
12. Incised wound size 2 x 1 cm x 6 cm present over back of neck right side.
13. Incised wound size 3 x 1 cm x 3 cm depth present over back of neck below.
14. Incised wound size 3 x 1 cm x 4 cm depth present over left side."

During the course of investigation, Investigating Officer examined the first informant and other witnesses and recorded their statements under Section 161 CrPC. Witnesses so examined have substantially supported the F.I.R. On the basis of above and other material collected by the Investigating Officer during course of investigation, he came to the conclusion that complicity of all the named accused is fully established in the crime in question. In view of above, Investigating Officer submitted police report under Section 173 (2) CrPC dated 26.05.2020 followed by first supplementary charge-sheet dated 17.08.2020 and ultimately second supplementary charge-sheet dated 28.08.2020, whereby aforementioned named accused have been charge-sheeted under Sections 498-A, 304-B, 323, 302, 120-B IPC and Section 3/4 Dowry Prohibition Act, police station Bichhwan, district Mainpuri. It is apposite to mention here that all the accused have been charge-sheeted under same sections.

At the very outset, the learned counsel for applicants submit that out of eight named/charge-sheeted accused, four named/charge-sheeted accused have already been enlarged on bail by this Court. The details of the same are as follows: co-accused Avnish Kumar has been enlarged on bail by this Court vide order dated 17.09.2020 passed in Criminal Misc. Bail Application No.23692 of 2020 (Avnish Kumar Vs. State of U.P.); co-accused Vijay Singh has been enlarged on bail by this Court vide order dated 05.11.2020 passed in Criminal Misc. Bail Application No.31236 of 2020 (Vijay Singh Vs. State of U.P.); co-accused Smt. Ragni has been enlarged on bail by this Court vide order dated 03.08.2021 passed in Criminal Misc. Bail Application No.34280 of 2020 (Smt. Ragni Vs. State of U.P.); and co-accused Rohit has been enlarged on bail by this Court vide order dated 04.12.2021 passed in Criminal Misc. Bail Application No.47989 of 2021 (Rohit Vs. State of U.P.).

It is further apposite to mention here that one of the named/charge-sheeted accused, namely, Dhan Devi has died while she was undergoing incarceration. As such, on date, three of the named/charge-sheeted accused are under incarceration.

Learned counsel for the applicants submits that applicant Vipin is the husband of deceased Anju. He is serving in the Indian Army as a Sepoy. His unit was stationed at Leh/Laddakh and he was on duty at Leh/Laddakh on the date and time of occurrence. The said fact is sought to be evidenced by the letter of the Commanding Officer dated 27.01.2021. The said document is on record at page 123 of the paper book. On the aforesaid plea of alibi, it is urged by the learned counsel for applicants that since the applicant was not present on the date, time and place of occurrence therefore, no charge-sheet could have been submitted against applicant as the alleged crime could not have been committed by the applicant. It is further contended that applicant was not arrested by the police but, he himself surrendered before the court below on 07.09.2021. As such, he has undergone approximately two years and one month of incarceration.

The police reports under Section 173 (2) CrPC were submitted on above mentioned dates upon which cognizance was taken by the concerned Magistrate. Since offence complained of is exclusively triable by the court of Sessions, resultantlty the concerned Magistrate committed the case to the court of Sessions. The committal order is said to have been passed on 24.11.2020, whereas framing of charge order was passed on 26.07.2021. In spite of the fact that a period of more than two years and one month has elapsed from the date of framing of

charge order, up to this stage, only one prosecution witnesses, namely, PW-1 Raj Kishore (first informant) has deposed before the court below. Only the statement-in-chief of the said witness has been recorded. After the statement-in-chief was recorded, the said witness started absconding from the proceeding of trial. Resultantly, bailable warrant was issued by the court below against the aforesaid witness vide order dated 07.07.2023. At this juncture, the learned counsel for first informant has produced copy of the order dated 25.08.2023 passed by the court below whereby PW-1 was directed to definitely get his examination-in-chief recorded on the next date i.e. 05.09.2023. However, the learned counsel for first informant could not inform the Court as to whether the statement-in-chief of PW-1 has been recorded on the said date or not.

On the above premise, it is thus urged by the learned counsel for applicants that there is delay in the conclusion of trial. Since the applicants are in jail, they cannot be held responsible for the delay in conclusion of trial. Referring to the judgement of the Supreme Court in Abdul Rehman Antulay and Others Vs. R.S. Nayak and Another 1992 (1) SCC 225 it is urged that right to speedy trial is a fundamental right of an accused. On account of the lackadaisical approach of the prosecution in pursuing the trial, the aforesaid fundamental right of the accused stands infringed, therefore applicants are liable to be enlarged on bail.

With regard to applicant Pushpendra, it is contended by the learned counsel for applicants that applicant is the father-in-law of one of the deceased, namely, Anju. It is argued in support of bail application of aforesaid accused that since there is delay in conclusion of trial therefore, applicant is liable to be enlarged on bail.

Even otherwise, applicants are men of clean antecedents having no criminal history to their credit except the present one. Applicant Vipin is in custody since 07.09.2021 and applicant Pushpendra is in custody since 03.05.2020. As such, they have undergone more than two and three years of incarceration, respectively. The police reports under Section 173 (2) CrPC have already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against the applicants stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicants. He, therefore, contends that applicants are liable to be enlarged on bail. In case the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since the applicants are named as well as charge-sheeted accused therefore, they do not deserve any indulgence by this Court. With reference to the post-mortem report of the deceased, they submit that the deceased have sustained 08 and 14 injuries on their bodies. The applicants are inmates of the house therefore, the burden is upon the applicants to explain the manner of occurrence by virtue of the provisions contained in Section 106 of Indian Evidence Act. However, up to this stage, applicants have failed to discharge the said burden.

With regard to plea of alibi raised by applicant Vipin on the basis the document on which the aforesaid plea is sought to be raised, it is contended that the said document is not form part of case-diary. Since the said document is not form part of case-diary therefore, no reliance can be placed upon the document which has been brought on record and heavily relied and is occurring at page 123 of the paper book. Applicant Vipin is the husband of the deceased-Anju and also son-in-law of another deceased-Sukh Devi therefore, strong motive has emerged against this applicant for committing the crime. On the above conspectus, it is thus urged by the learned A.G.A. and the learned counsel for first informant that no sympathy be shown by this Court in favour of applicant.

Apart from adopting the earlier submissions raised in opposition to the bail application of the applicant Vipin, it is urged by the learned A.G.A. and the learned counsel for first informant that since there is nothing on record to show that applicant was not present on the date, time and place of occurrence therefore, the prosecution has discharged its primary burden and, therefore, the burden now shifts upon this applicant himself to explain the manner of occurrence by virtue of Section 106 of Indian Evidence Act. Up to this stage, applicant-Vipin has miserably failed to discharge the said burden therefore, no sympathy be shown by this Court in favour of applicant.

With regard to the delay in conclusion of trial, they submit that from the order-sheet of the court below it is apparent that though PW-1 Raj Kishore (first informant) did not participate regularly in the proceedings of trial but, simultaneously, applications for adjournments were filed on behalf of accused also seeking stay of the proceedings on the date fixed. It is then contended that both the parties are at equal fault regarding the delay. As such, no plea regarding delay in the conclusion of trial can be raised before this Court. They further submit that the daughter-in-law and her mother have been put to death. The deceased daughter-in-law was a young lady aged about 21 years therefore, considering the nature of death and the manner of occurrence no sympathy be shown by this Court in favour of applicants. It is thus urged that the bail applications are liable to be rejected.

Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that on behalf of applicant Vipin the plea of alibi has been raised on the ground that on the date, time and place of occurrence the applicant was on duty and was serving at Leh/Laddakh where his unit was stationed, to buttress the said submission letter of Commanding Officer has been relied upon, copy of which is on record at page 123 of the paper book, though counter affidavit has been filed by the learned counsel for first informant as well as the learned A.G.A. but the veracity of the said document has not been disputed, prima facie since applicant Vipin was not present on the date, time and place of occurrence therefore he cannot be said to have committed the crime in question, it is well settled that where the occurrence takes place inside the house the primary burden is upon the prosecution to lead primary evidence with regard to the complicity of accused and only after the prosecution has discharged his primary burden, the burden shifts upon the accused to explain his innocence but the learned A.G.A. with reference to the record could not establish as to how the primary burden has been discharged by the prosecution for implicating applicant Vipin in the crime in question, so far as bail application of applicant Pushpendra is concerned, the only tenable argument which has been raised is that since there is delay in conclusion of trial therefore the said applicant is also liable to be enlarged on bail, for the said argument the judgement of the Supreme Court in Abdul Rehman Antulay and Others (supra) has been relied upon and on the above premise what is urged before this Court is that since the applicant is in custody therefore he cannot be said to be responsible for the delay in conclusion of trial and on account of the lackadaisical approach of the prosecution in pursuing the trial, the aforesaid fundamental right of the accused stands infringed therefore he is liable to be enlarged on bail could not be refuted by the learned A.G.A. nor the learned counsel for first informant, up to this stage as per the material on record it cannot be conclusively concluded that the delay in conclusion of trial is only on account of repeated adjournments prayed on behalf of defence, inasmuch as, bailable warrant was issued against PW-1 Raj Kishore as he was absconding from the proceeding of trial and, therefore, his examination-in-chief could not be held up to 25.08.2023, therefore irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to the present applications for bail but, without making any comments on the merits of the case, the applicants have made out a case for bail.

Accordingly, the bail applications are allowed.

Let the applicants Vipin and Pushpendra, involved in aforesaid case crime number, be released on bail on their furnishing personal bond with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice :-

- (i) The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the date 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under section 229-A I.P.C.
- (iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their

presence proclamation under section 82 Cr.P.C., may be issued and if applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under section 174-A I.P.C.

(iv) The applicants shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under section 313 Cr.P.C. If in the opinion of the trial court absence of the applicants 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 them in accordance with law.

(v) The trial court may make all possible efforts/endeavour and try to conclude the trial within a period of one year after the release of the applicant.

However, it is made clear that any wilful violation of above conditions by the applicants, shall have serious repercussion on their bail so granted by this court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the conditions mentioned above."

10. In so far as the order of the Apex Court is concerned, perusal of the same goes to show that although the Apex Court has extended the benefit of the fact that the accused therein was in jail since last five years but in so far as the present case is concerned, the gravity of the offence in itself is evident from the offence charged as the offence attracts the maximum punishment being death penalty in one of the offence since charged against the applicant. His grant of bail at this stage, looking to the gravity of the offence, nature of offence, the role of the applicant has to be looked into. The trial is also under progress in which the conduct of the accused goes to show that there is an alleged tampering with evidence in so far as the conduct of PW-1 goes to show as he initially had supported the prosecution case but after a substantial period of time, did not support the prosecution case.

11. In view of the same, considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail, the bail application is **rejected**.

12. However, since the matter is of the year 2020 and the applicant is the accused, it is provided that the applicant may file an application for expeditious disposal of the trial of the case before the court concerned within two weeks from today, which may as per its load of work, diary and pendency of cases, pass appropriate orders on the same.

Order Date :- 27.2.2025

M. ARIF

(Samit Gopal, J.)