

Court No. - 45

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40542 of 2020

Applicant :- Imran

Opposite Party :- State of U.P.

Counsel for Applicant :- A.C.Srivastava,Adesh Kumar,Ajay Kumar Pandey,Sheshadri Trivedi

Counsel for Opposite Party :- Anand Ji Mishra,G.A.,Kaushal Kumar Pandey

Hon'ble Saumitra Dayal Singh,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard Sri Shubham Singh, holding brief of Sri A.C. Srivastava, learned counsel for the applicant, Sri Manish Kumar Yadav, learned Brief Holder for the State and Sri Anand Ji Mishra, learned counsel for the informant.
3. Present is the second bail application. The first bail was rejected vide order dated 29.05.2020. In that, it was observed as below:

"5. Having heard learned counsel for the parties and having perused the record, while, no inference of fact is required to be drawn at this stage, at the same time, it has to be noted that the case of the present applicant is different with that of Bushra inasmuch as the deceased was last seen with the applicant alone and not alongwith Bushra. Also, Nadeem, Parvej, Danish, Aas Mohammad, Tahir and Sadakat have consistently stated having last seen the deceased with the applicant at about 7 p.m. The body of the deceased was recovered the next day. Thus, in the first place, the applicant cannot claim parity with Bushra and in the second, on account of recoveries of mobile phone as also wallet of the deceased having been claimed from the applicant, at this stage, the applicant does not appear to be entitled to bail.

6. Accordingly, the present bail application is rejected. However, rejection of the bail application cannot result in curtailing the liberty of the applicant indefinitely. In normal circumstances, the Court would have proposed time limit for conclusion of the trial. However, in view of prevailing extreme and extraordinary circumstance arising from the lockdown, it is not clear as to when full normalcy would arise and how much the learned court below would be able to prioritize the hearing of the present case as well. However, it is expected that upon normalcy being restored, the learned court below shall

make all efforts to conclude the trial as expeditiously as possible, without allowing for any undue or long adjournment to either side, keeping in mind the principle contained in Section 309 Cr.P.C. It is also hoped that the prosecution would itself make efforts to conclude the trial as expeditiously as possible by presenting its witnesses without delay. "

4. The trial progressed. However, it could not be concluded till October, 2020. In such circumstances, within five months of rejection of the bail application, the present appellant filed instant second bail application. It was released by regular bench on 24.11.2020 for reasons of first bail rejection order. Thereafter, the ordersheet reveals that the case was listed on 10.12.2020. On that date, it was directed to be listed alongwith record of first bail application. On 12.03.2021, the matter was listed before the bench specially constituted to hear the second bail application. However, learned counsel for the applicant was not present. Accordingly, case was directed to be listed on 25.03.2021. On that date, a Supplementary Affidavit was filed by the applicant. Learned counsel for the informant prayed and was granted two weeks' time to file counter affidavit. The matter was required to be next listed on 15.04.2021. The ordersheet further reveals that case was next listed on 24.02.2022, up to which date, affidavits had not been exchanged between the parties. Accordingly, further time was granted to the parties and case was directed to be listed on 24.03.2022. On that date, case could not be heard due to shortage of time. It was, accordingly, directed to be listed on 07.04.2022.

5. In the meantime, due to an administrative order passed by the then Hon'ble Chief Justice dated 27.04.2022, bail applications decided by individual judges were to be listed before Hon'ble Judges having regular roster, if such second/later bail applications of the same applicant had been decided more than two years ago. Accordingly, the ordersheet reveals that the case came to be listed on 18.08.2023 before another bench. Referring to paragraph 6 of the first bail rejection order, the applicant was required to file affidavit to establish that the said order had been placed before the learned court below.

6. Thereafter, the case was again listed (before the regular bench), on 06.10.2023. None appeared to press the bail application. Accordingly, it was directed to be listed on 18.12.2023. On that date, the applicant filed another Supplementary Affidavit. Learned counsel for the informant sought and was granted time for the next date. Accordingly, the case was directed to be listed on 20.02.2024.

7. Thereafter, by virtue of an order passed by the Supreme Court, the administrative order earlier passed by the then Hon'ble The Chief Justice came to be recalled on 23.02.2024. All subsequent bail applications by the same applicant were now required to be placed before the judge who may have passed the earlier bail rejection order.

8. In such circumstances, this application came to be listed before this specially constituted bench again on 15.03.2024. On that date, the following order was passed:-

"1. Office has reported that connected bail application is under search.

2. Let the connected file be searched out urgently.

3. Also in view of our earlier experience with Sri A.C. Srivastava learned counsel for the applicant where filing of I.A. and order passed therein to expedite the proceeding was not informed to the Court in Criminal Misc. Bail Application No. 29190 of 2022, we require Sri A.C. Srivastava learned counsel for the applicant to file a further affidavit disclosing the correct facts with respect to proceeding that may have arisen pursuant to the rejection of the first bail application.

4. Put up on 22.3.2024. "

9. It may be pertinent to extract that relevant portion of order dated 31.05.2023 in Criminal Misc. Bail Application No.29190 of 2022. It reads as below:

"7. Present third bail application was filed on 26.6.2022. The same appears to have been first listed before this bench on 23.8.2022. Since none appeared to press this application, then, it was directed to come up on 27.9.2022. It has somehow remained pending, though it ought to have been listed earlier. The applicants instead of mentioning and thus bringing to the knowledge of this Court the urgency that may have arisen, and the office mistake to not list the case, chose to file I.A. No. 64348/2023 in SLP (Crl) No. 7296 of 2021 before the Supreme Court. That Court appears to have then made an observation on 01.05.2023, that the present bail application may be heard and decided within four weeks. Thereafter, the matter was listed on 16.5.2023 upon listing application filed by the applicants on 5.5.2023.

8. On 16.5.2023, amongst others, report was also called from the learned court below as to the status of the trial proceedings. The report of the learned court below reveals, some time is required by it to conclude the trial proceedings inasmuch as though the main trial in Sessions Trial No. 473 of 2017, is nearing conclusion and evidence of formal witness is required to be recorded, for which non-bailable warrants have also been issued to the Investigating Officer, trial proceeding of the present applicants and other co-accused is at an early stage of evidence. Plainly, it is apparent, those trial proceedings would take time to conclude. Not being swayed by notions and ideals, that Courts always seek to follow, I am of the firm opinion, that the time of four months indicated by the

learned Court below is wholly justified, in the pure interests of justice, which is the sole driving force of all Courts.

9. In such circumstances, the bail application has been heard on merits. Upon hearing learned counsel for the parties and upon perusal of the record, it transpires, as on date, fresh facts have come on record inasmuch as the recording of the Close Circuit TV has been examined by the forensic science laboratory. Prima facie, the report of the forensic science laboratory, as noted in the order dated 5.11.2022 rejecting the discharge application made by the applicants indicates, no tampering may have been made. Though no final conclusion is required to be drawn and no such observation is being made at this stage, that material cannot be completely ignored at this stage, for the purposes of consideration of the bail application.

10. Then, it may be noted, present applicants have remained confined for more than four years. The fact that they may have earlier absconded and therefore their first bail application had been rejected would now fade into insignificance considering the other fact that they have no criminal history. That fact is perhaps unique to the present applicants (in comparison to the other accused persons). Then, on pointed query, learned counsel for the informant fairly states, though witness of fact have been examined in Sessions Trial No. 473 of 2017, no direct role of causing any fire-arm or other fatal injury has been assigned to the present applicants. In that regard, much emphasis has been laid to the fact that the case of the co-accused Sajid, Usman, Ashafak and others may stand on a different footing.

11. The observation made by the Court while rejecting the second bail application of the present applicants as to further investigation having been conducted without due permission of the learned Magistrate may also not weigh so heavily as to reject the third bail application after the applicants have suffered confinement for more than four years and the trial is still not nearing its end. Also, the report of the Forensic Science Laboratory, with respect to the CCTV recording may not allow this Court to completely disregard that material, for purpose of grant of bail, today.

12. The only reason that may still prevail with the Court to reject the bail application of the present applicants is the conduct offered by them with the Court itself. Prima facie, the applicants, their 'paikar' and their counsel who may have filed and pursued legal proceedings, after rejection of SLP (Crl.) No. 7296 of 2021 and especially those who have pursued this application, appear to have acted in the manner that is clearly questionable and doubtful. However, the Court may never involve with any litigant or his lawyer. It may only deal with them keeping them out of

its focus, that must always remain to address the demands of justice. The interest of justice and the commitment to the cause of justice commend to the Court to overlook the unexplained conduct of the present applicants, their counsel and pairakar in the Courts own quest to deliver dispassionate justice.

13. In any case, contrite or not, Shri A.C. Srivastava, learned counsel for the applicants (in the third bail application), has offered his unconditional apology on his behalf and on behalf of the applicants and their 'pairakar'. The Court does not accept that apology. At the same time, it also does not propose to take this matter further, as in present times, where litigants and now even lawyers (at least a visible section), appear to look at the Courts as a forum to achieve their purely material goals and not seek justice, that exercise may be a complete waste of time. Those who stand thus wasted to purely material gains, may neither reform, nor they may understand, the demands of dispassionate justice. "

10. Yet again Sri A.C. Srivastava, learned counsel has acted in a questionable manner noted above. Again in such circumstances, on 22.03.2024, it was orally informed to the court that the first bail rejection order dated 29.05.2020 had not been placed before the learned trial court. Thus, learned counsel for the informant was granted time to file further objections. The case was listed for 12.04.2024. On that date, hearing of the case appears to have been adjourned for reasons of another Supplementary Affidavit filed by the learned counsel for the applicant, one day earlier. Accordingly, time was granted to learned counsel for the informant to complete his instructions. Case was then directed to be listed on 26.04.2024. On the next dates, 26.07.2024 and 31.08.2024, hearing could not take place for reason of shortage of time. The case was next listed on 10.01.2025. On that date, none appeared for the applicant. In such circumstances, the following order came to be passed :-

"1. This is a specially constituted bench.

2. List revised. Though names of four counsel have been shown in the cause list as counsel for the applicant, none is present for the applicant in either call. Shri R.K. Srivastava, learned A.G.A. and Shri Anand Ji Mishra, learned counsel for the informant are present.

3. On query made, learned counsel state that the trial is on the verge of conclusion. All prosecution witnesses have been examined. The matter is pending at the stage of statement to be recorded under Section 313 Cr.P.C.

4. Second bail application has remained pending for very long. It came back to this Court in view of the decision of the Supreme Court in Criminal Appeal No. 1503 of 2023 (Pradhani Jani vs The State of Odisha), SLP (Crl.) No.

7203 of 2023 (*Sajid vs State of U.P.*), SLP (Crl.) No. 15585 of 2023 (*Rajpal vs State of Rajasthan*) and Criminal Appeal No. 303 of 2024 (*Kusha Duruka vs The State of Odisha*).

5. Order-sheet reveals that the present application had earlier been pressed by learned counsel for the applicant. In the interest of justice, put up on 24.1.2025 when this bench may be constituted next.

6. Shri Anand Ji Mishra, learned counsel for the informant may inform learned counsel for the applicant about this order in writing by 17.1.2025. "

11. On the last date, i.e. 24.01.2025, learned counsel for the applicant filed another Supplementary Affidavit dated 22.09.2024, after four months of it being sworn. At that stage, a query was raised by the Court as to the status of the trial. Disputed position emerged on the oral submissions made by the learned counsel for the applicant and learned counsel for the informant. In such circumstances, following order came to be passed :-

"1. Heard Sri Shubham Singh, Advocate, holding brief of Sri A.C. Srivastava, learned counsel for the applicant; Sri R.K. Srivastava, learned AGA for the State and Sri Anand Ji Mishra, learned counsel for the informant.

2. On the last date, none appeared on behalf of the applicant. Accordingly, the case has been listed today before a specially constituted bench.

3. Learned counsel for the applicant has filed supplementary affidavit dated 20.09.2024. Though such affidavit appears to have been served on the State earlier, it has been filed today that is after four months. It does not make any disclosure of the current status of the trial. The last order sheet entry is of date 09.09.2024.

4. In such circumstances, on oral query learned counsel for the applicant states, at present, the trial is pending at the stage of statement to be recorded under Section 313 Cr.P.C.

5. That has been disputed by learned counsel for the informant. He states, the trial is at the stage of final hearing. According to his oral instruction, the trial is fixed for today for final hearing.

6. At the same time, on further oral query, learned counsel for the applicant states, though none of the prosecution witness have turned hostile, there are material inconsistencies in the prosecution testimony as may not result in conviction.

7. Insofar as the merits submission is concerned, since a

wholesome argument is to be advanced before the learned trial court, we are not inclined to make any observation as may affect the merits of the trial itself, if hearing is ongoing.

8. Insofar as the status of the trial is concerned, let a better affidavit be filed by learned counsel for the applicant, clearly indicating the stage of the trial and the reason for its pendency. Liberty is also granted to learned counsel for the informant to file appropriate affidavit in that regard.

9. List this case again on 07.02.2025.

10. In the meanwhile, parties are at liberty to file a copy of this order before the learned court below as may allow the court to expedite the proceedings in terms of the order passed while rejecting the first bail application. "

12. Today, office has reported that the Supreme Court has passed order dated 06.01.2025 in Special Leave Petition (Crl) Diary No.61209 of 2024. It may be noted that above order though dated 06.01.2025 was not brought to the knowledge of the Court by the counsel appearing for the parties on the earlier dates. After that order was passed (by the Supreme Court), the case has been listed twice. On 10.01.2025, none appeared for the applicant and on 24.01.2025, that fact was not clearly informed to the Court.

13. Today upon further query made, learned counsel for the informant states that he was not aware of such proceedings.

14. Only upon query made and not otherwise, learned counsel for the applicant has supplied a copy of the said order to the Court. It has been marked as 'X' and retained on record. Perusal of the order reveals that Special Leave Petition (Criminal) Diary No.61209 of 2024 was filed against the order dated 31.08.2024. Ordersheet of this case reveals that on that date, the hearing of the bail application was adjourned for reason of accommodation sought by the learned counsel for the informant. It was noted that time was short. Thereafter, the matter was not listed till 10.01.2025.

15. In such circumstances, the record has been examined. It reveals that no early listing application was filed by the applicant after order dated 31.08.2024 was passed. Thus, the applicant did not seek early listing or hearing of the second bail application. Rather, he approached the Supreme Court. While right to approach the Court remains vested with the litigant, at the same time, record is what it is. The order dated 06.01.2025 passed by the Supreme Court is quoted as under:-

"1. Delay condoned.

2. We are shocked to learn from the learned counsel

appearing for the petitioner that the bail application filed by the petitioner in the High Court of Judicature at Allahabad bearing Misc. Bail Application No.40542 of 2020 is still pending as on date.

3. We are informed that the High Court has yet to take an appropriate decision on the said bail application.

4. We are further informed that the trial is in progress. The prosecution has closed its evidence. Perhaps, what is now left could be the recording of the further statement of the petitioner-accused under Section 313 of the Cr.P.C. and the final arguments.

5. However, the fact remains that the bail application is pending past four years.

6. Since the trial is on the verge of the completion, we are not willing to call for any report from the High Court as to why this bail application is pending past 04 years.

7. However, the Registry shall forward this order to the High Court will a request to place this order before Hon'ble Chief Justice of the High Court of Allahabad for his kind consideration.

8. The petition stands disposed of accordingly.

9. Pending application(s), if any, stand disposed of."

16. In such circumstances, the second bail application has been heard.

17. Learned counsel for the applicant has urged that there are major contradictions emerging in the testimony of the eye-witnesses namely PW-1, PW-3 and PW-4. While the cause of death is strangulation, PW-3 has deposed that he had seen blood oozing out from the body of the deceased. To this extent, he has also referred to the autopsy report. Also, it has been submitted the appellant remained confined for more than six years. Therefore, bail has been claimed at this stage.

18. On the other hand, learned AGA and learned counsel for the informant would submit that this is a case of murder by strangulation. Though argument of some inconsistencies are being made in the prosecution evidence, those may be left to be examined by the learned court below, at the stage of final hearing. At present, all evidence has been completed. The statement under Section 313 Cr.P.C. has also been recorded.

19. That position of fact was first disputed by learned counsel for the parties (on the last date). However, today, learned counsel for the applicant fairly concedes that wrong statement came to be made on the last date for want of proper instructions. Thus, he admits that at present the trial is at the stage of final hearing. It is also admitted to

the parties that next date fixed in the proceedings is 14.02.2025.

20. In view of such facts and keeping in view the stage of trial, I am not inclined to grant bail to the applicant at this stage as no fresh ground is made out. At the same time, it is to be ensured that the trial concludes early. Since all facts submissions being relied by the learned counsel for the applicant, have to be tested on their own merits, in light of the evidence that may have been led by the parties on the own/individual's application of mind by the learned trial court, hence, without making any observation as to the merits of those submissions advanced before this Court, solely for reason of stage at which the trial is, the bail sought is declined.

21. Accordingly, second bail application is **rejected**. However, learned court below will ensure that trial is concluded not later than 15.03.2025 without being prejudiced by any observations made in this order.

22. Let a copy of this order be communicated to the learned trial court, by Registrar (Compliance).

Order Date :- 7.2.2025

P Kesari

(S.D. Singh, J.)