

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43701 of 2024

Applicant :- Chhedi

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Ashish Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Learned A.G.A. has informed that notice to the informant has been served on 26.11.2024.
3. Heard Sri Ashish Pandey, learned counsel for the applicant, Sri Sunil Kumar, learned A.G.A. for the State and perused the material placed on record.
4. This is the second bail application on behalf of the applicant. The first bail application was rejected by Hon'ble Mrs. Sadhna Rani (Thakur),J. (since retired) vide order dated 9.11.2022 passed in Criminal Misc. Bail Application No.26072 of 2022.
5. Applicant seeks bail in Case Crime No.154 of 2021, under Sections 376, 313 I.P.C. and 3/4 POCSO Act, Police Station- Paniyara, District- Maharajganj, during the pendency of trial.
6. Learned counsel for the applicant has stated that the applicant is wanted under Sections 376, 313 I.P.C. and 3/4 POCSO Act. It is stated that there is no evidence of applicant having caused miscarriage of the fetus of the victim. The victim is major and as per the medical report she is 19 years old.
7. Learned counsel for the applicant has placed much reliance on Section 35 of the POCSO Act in which it is stipulated that statement of the victim shall be recorded within a period of 30 days from the date of taking cognizance by the trial court and the trial shall be completed as soon as possible within a period of one year, but herein more than four years have passed and the trial is moving at a snail's pace. Section 35 of the POCSO Act reads as follows:

"35. Period for recording of evidence of child and disposal of case.—(1) The evidence of the child shall be recorded

within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence."

8. Learned counsel for the applicant has stated that it is a case where the infringement of personal liberty of the applicant as enshrined under Article 21 of the Constitution of India has been done. He is languishing in jail since 8.6.2021, as such, he is incarcerated in jail for more than four years. He is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

9. Learned A.G.A. has vehemently opposed the bail application.

10. This Court had called for the status of trial from the concerned court. As per the said status report dated 20.2.2025, seven prosecution witnesses have been examined, as such, there seems to be no likelihood of conclusion of trial in near future as two more witnesses are to be examined. Thereafter, it will take further time to record the statements of remaining witnesses and the statement of accused U/s 313 Cr.P.C.

11. It is true that in the cases of special acts the courts have special powers, but the special rights emanate for the accused persons also.

12. Allowing the bail of the accused in ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another, 2024 INSC 645*** the Supreme Court has observed as follows:

"7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are inclined to exercise our discretion in favour of the appellant herein keeping in mind the following aspects:

(i) The appellant is in jail as an under-trial prisoner past four years;

(ii) Till this date, the trial court has not been able to even proceed to frame charge; and

(iii) As pointed out by the counsel appearing for the State as well as NIA, the prosecution intends to examine not less than eighty witnesses.

8. Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be,

an accused has a right to speedy trial as enshrined under the Constitution of India.

9. 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.

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, (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 Russell, 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."

11. The same principle has been reiterated by this Court in **Gurbaksh Singh Sibba v. State of Punjab (1980) 2 SCC 565** that the object of bail is to secure the attendance of the accused at the trial, 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.

12. Long back, in **Hussainara Khatoon v. Home Secy., State of Bihar, (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."

13. The aforesaid observations have resonated, time and again, in several judgments, such as **Kadra Pahadiya & Ors. v. State of Bihar, (1981) 3 SCC 671** and **Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225**. In the latter the court re-emphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:

"The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial."

14. In **Mohd Muslim @ Hussain v. State (NCT of Delhi) 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."

15. The requirement of law as being envisaged under Section 19 of the National Investigation Agency Act, 2008 (hereinafter being referred to as "the 2008 Act") mandates that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the 2008.

*16. A three-Judge Bench of this Court in **Union of India v. K.A. Najeer** (2021) 3 SCC 713 had an occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAPA Act and observed as under: (SCC p. 722, para 17)*

"17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

*17. In the recent decision, **Satender Kumar Antil v. Central Bureau***

of Investigation (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires *inter alia* the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

"We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code."

18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

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."

13. The Supreme Court has also allowed the bail of the accused on ground of her long period of incarceration i.e. 6½ years and there being no likelihood of conclusion of trial in near future in the case of ***Indrani Pratim Mukerjea v. CBI 2022 SCC OnLine SC 695.***

14. In the money laundering case of ***V. Senthil Balaji V. The Deputy Director, Directorate of Enforcement 2024 INSC 739***, the accused was incarcerated for more than 15 months as such the Supreme Court declared "inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together".

15. In a significant judgment of ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh 2024 LiveLaw (SC) 486*** granting bail to an undertrial prisoner facing charges under the Unlawful Activities (Prevention) Act, 1967 (UAPA), the Supreme Court held that a constitutional court can grant bail despite statutory restrictions if it finds that the right to speedy trial under Article 21 of the Constitution has been infringed.

16. While granting bail to ex-West Bengal minister in ***Partha Chatterjee v. Enforcement Directorate 2024 SCC OnLine SC 3729***, the Supreme Court reiterated the principle that "a suspect cannot be held in custody indefinitely and that undertrial incarceration should not amount to punitive detention."

"The Court would, nevertheless, ensure that affluent or influential accused do not obstruct the ongoing investigation, tamper with evidence, or influence witnesses, namely, actions that undermine the fundamental doctrine of a fair trial," observed the bench.

17. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, taking into consideration the age of the victim and the fact that applicant is incarcerated in jail for a considerable period of time and also that the trial is moving at a snail's pace, and without expressing any opinion on the

merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is **allowed**.

18. Let the applicant- **Chhedhi**, who is involved in aforementioned case 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with evidence during trial.

(ii) The applicant shall not pressurise/intimidate with the prosecution witnesses.

(iii) The applicant shall appear before the trial court on the date fixed.

19. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

20. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 25.7.2025

Vikas

(Justice Krishan Pahal)