



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on: August 16, 2024

Decided on: September 26, 2024

+ **BAIL APPLN. 1912/2023**

NARENDER MEENA

..... Petitioner

Through: Ms. Rebecca John, Senior Advocate with Mr. Gaurav Gupta, Mr. Deepanshu Choithani, Ms. Anushka Baruah, Mr. Mayank Pachauri, Mr. Hasan Zaidi, Mr. Rohit Kumar and Ms. Madhuri Khubwani, Advocates

V

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Mr. Rajesh Kumar, SPP with Ms. Mishika Pandita and Mohd. Changez Ali Khan, Advocates with Insp. Rohit Yadav

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

O R D E R

1. The petitioner/Narender Meena has filed the present bail application under section 439 of the Code of Criminal Procedure,



1973 (hereinafter referred to as “**the Code**”) seeking regular bail in FIR bearing no. RC-06(S)/2021/CBI/SC-III/ND dated 10.09.2021 registered under sections 302/323/341/34 of the Indian Penal Code, 1860 (hereinafter referred to as “**IPC**”) at P.S. CBI/SC-III/New Delhi.

2. The relevant facts of the case as reflecting from record are that FIR bearing no. 0451/2021 dated 09.08.2021 was got registered under sections 302/323/341/34 IPC at P.S. Hari Nagar pertaining to murder of an undertrial prisoner (hereinafter referred to as “**UTP**”) namely Ankit Gujjar in pursuance of order dated 07.08.2021 passed by the concerned court of Metropolitan Magistrate, Tis Hazari Courts, Delhi under section 156 (3) of the Code on an application/complaint filed by Geeta Devi, mother of UTP Ankit Gujjar. The allegations as made in FIR are that the petitioner/Narender Meena, the then Deputy Superintendent, Central Jail-3, Tihar Central Prison, New Delhi and other jail officials on 03.08.2021 had brutally beaten UTP Ankit Gujjar and did not provide any medical attention leading to his death in the jail premises. The petitioner/Narender Meena and other officials were harassing UTP Ankit Gujjar to extort money from his



relatives. The mother and other relatives of UTP Ankit Gujar filed writ petition W.P. (Crl.) 1558/2021 before this Court seeking transfer of investigation of FIR bearing no.451/2021 registered at P.S. Hari Nagar to CBI and coordinate bench of this Court vide judgment dated 08.09.2021 transferred the investigation to CBI. Accordingly FIR bearing no. 0451/2021 was re-registered vide RC no.06(S)/2021/CBI/SC-III/ND under sections 302/323/341/34 IPC at P.S. CBI/SC-III/New Delhi. The charge sheet was filed on 01.07.2022 before the concerned court under sections 304/323/34 IPC against the petitioner/Narender Meena and subsequently supplementary charge-sheet dated 13.09.2022 was filed before the concerned court against 06 persons including the petitioner/Narender Meena.

2.1 The petitioner/Narender Meena as per the charge sheet in June 2021 demanded Rs.5 lakhs from Ankit Gujar for allowing him to use mobile phone and the deal was finalised at Rs.2,25,000/- and out of which Rs.2,00,000/- were paid. Subsequently Ankit Gujar had decided not to give balance amount of Rs.25,000/- and the petitioner/Narender Meena due to this reason started to harass him as



well as the other 02 inmates lodged in his cell namely Gurjeet @ Bobby and Gurpreet @ Badal. The witnesses were examined during the investigation and relevant documents and articles were collected. The investigation was focused on the 05 issues which are (1) use of criminal force/murder of Ankit Gujjar; (2) negligence in providing medical attention to Ankit Gujjar; (3) connivance of Vinay Thakur in not allowing the PCR personnel inside the jail to enquire about the condition of Ankit Gujjar; (4) non-functioning/shutting down of CCTV cameras and (5) extortion/demand of money by jail officials in Tihar Central Prison.

2.2 Regarding issue (1), statements of four eye-witnesses namely Gurjeet @ Bobby, Gurpreet @ Badal (both inmates lodged in the cell of UTP Ankit Gujjar), Bhisam @ Chintu and Deepak Koli [both *sewadars* at Chakkar (office of Deputy Superintendent, Internal)] were recorded wherein they primarily stated that a team of jail officials on 03.08.2021 at around 04:00 pm conducted a search of Cell-16, Ward-5A where UTP Ankit Gujjar was lodged along with Gurjeet @ Bobby and Gurpreet @ Badal and one mobile set, one USB cable and one handmade knife were recovered from the cell



during the search. UTP Ankit Gujjar was not available in the cell at that time as he had been taken to Jhajjar for production in a trial proceeding and was brought back at around 06:30 pm. UTP Ankit Gujjar due to recovery of the prohibited items from the cell was instructed to be shifted to Ward-1 but UTP Ankit Gujjar resisted the directions of the jail authorities and refused to shift to Ward-1 due to presence of rival gang members there. Thereafter heated verbal arguments and fisticuff were exchanged between the petitioner/Narender Meena and UTP Ankit Gujjar at around 07:00 p.m. on 03.08.2021. The petitioner/ Narender Meena as per eye-witnesses subsequent to this incident asked *sewadars* to make announcements directing whole jail staff to report at *Chakkar* (internal office). Thereafter the petitioner/Narender Meena along with above named two inmates lodged in Cell-16 of Ward-5A were taken to *electrical panja* at *Chakkar* and were brutally beaten for about 30 minutes by the petitioner/Narender Meena along with 05 other jail officials with polycarbonate lathis (*danda*) and they started to bleed due to assault. UTP Ankit Gujjar was subjected to forceful attack and his vital organs were targeted. The inmates Gurpreet and



Gurjeet were shifted to Cell-19 of Ward-1 and lodged with another inmate namely Viplav. UTP Ankit Gujjar was shifted to Cell-9 of Ward-1 separately to keep him in isolation and was groaning with pain.

2.3 UTP Ankit Gujjar after the incident of brutal use of criminal force by the jail officials made a call/complaint for fever and body ache at around 12:30 a.m. on 04.08.2021 through Warder Yogesh and the said complaint was brought to the knowledge of Dr. Sunil Sharma, Medical Officer on duty who made an entry regarding the complaint in the OPD Register of Ward-1 but did not attend the medical call and sent nursing staff who gave pain killers to him and proper description of injuries was not noted in the register. The petitioner/Narender Meena was requested to get the inmates medically examined but he refused to do so. Another inmate/ witness namely Zakir who was lodged in Cell-10 of Ward-1 (adjacent to Cell-9) stated that UTP Ankit Gujjar continued groaning till wee hours of 04.08.2021. UTP Ankit Gujjar In the morning of 04.08.2021 was found lying unconscious in his cell and possibly died in the wee hours of 04.08.2021. The roll call of prisoners was taken around



05:30 a.m. and Head Warder called UTP Ankit Gujjar from outside his cell to join the roll call but got no response from him. The cell was unlocked and UTP Ankit Gujjar was taken to Jail Hospital, CJ-3, Tihar Central Prison where he was declared brought dead at 07:15 am. The cause of death of UTP Ankit Gujjar was stated to be multiple anti-mortem injuries like abrasions, contusions, lacerations present all over the body and subarachnoid haemorrhages in brain which were blunt force injuries caused by blunt objects like rod, baton or lathi etc. The cause of death of UTP Ankit Gujjar was **“haemorrhage consequent upon cumulative effect of multiple blunt force injuries sustained to the body”**. UTP Ankit Gujjar as per post-mortem report had died in the intervening night of 03-04.08.2021.

2.4 The blood and nail clippings of UTP Ankit Gujjar were collected by Delhi Police and sent to DFS, Rohini, Delhi for DNA profiling. The expert opinion/DNA profile was collected by Delhi Police and provided to CBI for investigation. CBI recovered five polycarbonate lathis with possible traces of blood from the Store of CJ-3 after forensic examination by CFSL Expert. Two more



polycarbonate lathis with possible traces of blood were recovered from the Factory Panja, Chakkar and Electric Panja located inside CJ-3, Tihar Central Prison, Delhi. Thereafter seven lathis were sent to the CFSL, New Delhi for examination and expert opinion. CFSL has confirmed the presence of blood on two lathis matching with the DNA profiles of UTP Ankit Gujjar, Gurjeet @ Bobby and Gurpreet @ Badal. CFSL report confirms the presence of blood of Ankit Gujjar at the scene of crime. The CCTV cameras installed in jail no.3 were found to be not working at the relevant time at Ward-5A, Electric Panja and Ward-1. The CCTV footage of Deodhi which was ordered to be preserved by the concerned court of Metropolitan Magistrate was also not available. The certificate dated 06.08.2021 regarding non-functioning of the CCTV cameras due to technical fault was found given ante-dated. The petitioner/Narender Meena was the overall in-charge of Jail no.3 after the Jail Superintendent and the co-accused persons were his subordinates. In the supplementary chargesheet, details were mentioned in respect of the co-accused to show how they participated in the commission of offence and also did not make any effort to get the injured persons



medically examined despite having knowledge of their bad condition. The co-accused persons also did not report the incident to the senior officers. The petitioner/Narender Meena was arrested on 05.05.2022 and was remanded to judicial custody vide order dated 11.05.2022.

3. The petitioner filed an application for grant of regular bail titled as **State V Narender Meena and Others** which was dismissed vide order dated 24.04.2023 (hereinafter referred to as “**the impugned order**”) passed by the court of Sh. Ashwani Kumar Sarpal, Special Judge (PC Act), CBI-08, Rouse Avenue Courts, New Delhi (hereinafter referred to as “**the trial court**”). The relevant portion of the impugned order passed by the trial court is reproduced as under:

...However, keeping in view the seriousness of the case and accused trying to influence the witnesses, he does not deserve to be released on bail. Accused is in such high position and of status that the apprehension of prosecution that he will influence the witnesses and tamper with the evidence if released on bail are very strong and cannot be ignored. If the case is proved by prosecution and charge of murder is framed against him as per submissions of CBI, then the punishment will be very severe which may be capital punishment or life imprisonment, so I am of the view that it is not a fit case where accused should be released on bail. The larger interest of the society has to be given preference over the liberty of the accused. The



incident of beating given to Ankit Gujar and other two inmates who were under judicial custody were totally unconnected with the incident of alleged slapping and fisticuff taken place inside of the cell as accused in order to take revenge and after preplanning called staff and other co-accused to Chakkar and gave beatings to Ankit Gujar and also gave instructions not to give him any medical aid, who ultimately expired. Moreover, there is life risk of the accused as admitted by him because of threats received from the associates of gangster deceased Ankit Gujar if he comes out of the jail. The delay is mostly happening on the part of the accused persons despite the fact that this court is trying to take up the matter on day to day basis. Accordingly, bail application is dismissed.

4. The petitioner/Narender Meena being aggrieved filed the present bail application on the grounds that the investigation of the case has been done in an unfair and prejudicial manner compromising the right of a fair trial guaranteed under Article 21 of the Constitution to the petitioner. The petitioner was not being properly heard by the investigative agencies so he filed applications bearing CrI. M.A. 8637-39/2022 in W.P.(CrI.) 1558/2021. CBI sent notice dated 04.05.2022 to the petitioner for joining the investigation on 05.05.2022 and he was arrested on the same day in a hurried manner just because the petitioner sought to enforce his right to fair investigation. CBI or Delhi Police till 05.05.2022 had never



expressed any apprehension that the petitioner is not cooperating with the investigation or influencing the witnesses or may flee from justice. The petitioner was arrested due to reason that he approached this court stating that CBI is not conducting fair investigation.

4.1 The petitioner's father is suffering from various ailments like brain haemorrhage, arthritis and has recently undergone knee replacement surgery. The parents of the petitioner are old aged and were being looked after by the petitioner. There is no reason for keeping the petitioner in custody as the CBI had already admitted that the investigation qua the petitioner was already complete. The prosecution is relying on 150 witnesses, 159 documents and 24 exhibits and the trial would take considerable time to conclude. There have been serious lapses in the investigation causing great prejudice to the petitioner.

4.2 The co-accused namely Dinesh Chikara and Deepak Dabas applied for statutory bail under section 167 (2) of the Code. CBI filed a written reply wherein it was stated that there was no evidence against the petitioner regarding the allegation of extortion levelled by UTP Ankit Gujjar or his family. The petitioner has a wife and 02



school going children aged 9 and 13 years respectively and is the primary bread earner of the family. The family of the petitioner is suffering in his absence and is at high risk due to threats received from gang members of UTP Ankit Gujjar.

4.3 The impugned order passed by the trial court suffers from various errors. The trial court dealt with the bail application as if it was conducting a full trial. The trial court has weighed the entire evidence, although incorrectly, at the stage of bail causing prejudice to the petitioner and denial of natural justice to him. The impugned order is liable to be set aside. The petitioner suffered several serious injuries as he was brutally beaten by UTP Ankit Gujjar and his cellmates. The petitioner has visited the Jail Hospital, DDU Hospital, GB Pant Hospital and Safdarjung Hospital for treatment several times but still his condition has deteriorated. The petitioner was advised to undergo CT Angiography, thereafter, he was referred to Medical Board by the Safdarjung Hospital. The petitioner moved an application for grant of interim bail on medical grounds before the trial court which was also dismissed by the trial court vide separate order dated 24.04.2023. The charge sheet qua the petitioner has



already been filed. There are no prior criminal antecedents/cases/departmental complaints against the petitioner. The petitioner has deep roots in the society and there are no chances of him fleeing from justice. The petitioner and his family members have a threat to their lives from the gang members of Ankit Gujjar and Rohit Choudhary inside the jail. The petitioner has spent more than one year in jail and has developed neuro-medical ailments. The petitioner is an ordinary citizen having high religious values. The petitioner has joined investigation as and when directed by the IO and supplied all the information. The petitioner is no longer required for interrogation as the investigation is already complete. The petitioner prayed that he be granted regular bail in case arising out of RC-06(S)/2021/CBI/SC-III/ND.

5. The respondent/CBI filed a reply to the present bail application wherein besides mentioning the factual position stated that the petitioner is making vague and irrational submissions. The petitioner was suspended vide enquiry related to death of UTP Ankit Gujjar. The petitioner facilitated use of phones inside the jail in lieu of money which was established during investigation. The petitioner



slapped UTP Ankit Gujjar who shouted at him saying “*aur kaha tak paise doon main tumhe*”. The petitioner/Narender Meena was witnessed by four eye-witnesses while he was assaulting UTP Ankit Gujjar and his presence at the scene of crime has been confirmed by other witnesses. The forensic evidence collected during investigation has corroborated the account of the eye-witnesses. The doctors who examined the petitioner, the doctor at Jail Hospital and his colleague who met him after the incident have stated that they did not observe any grievous injury on the body of the petitioner. The sanction for prosecution under section 197 of the Code against the petitioner has been issued by the Competent Authority after scrutinizing the material on record.

5.1 The doctors who examined the petitioner at DDU Hospital stated that the petitioner had superficial scratches and they did not observe any grievous injury on his body. The family of the petitioner is also provided adequate security after the incident. The complaints have been filed against the petitioner that he is trying to manipulate the witnesses through Jail staff. The petitioner himself is responsible for delaying the trial. The petitioner has been chargesheeted under



sections 304/323/34 IPC. The trial court passed the impugned order after application of judicial mind and after considering the material on record. The petitioner has filed applications for interim bail on medical grounds. It is prayed that the present bail application be dismissed.

6. Ms. Rebecca John, learned Senior Advocate for the petitioner advanced oral arguments and also filed written submissions. The learned Senior Advocate argued that the petitioner was not present at the scene of crime at the time of occurrence of the alleged offence. The learned Senior Counsel in support of arguments stated that UTP Ankit Gujjar was brought from Jhajjar Court to Tihar Jail no. 3 at 06:30 pm and he was informed by the warder Shiva about his transfer to ward no. 1 but he refused to shift. Thereafter, Warder Shiva informed the petitioner/Narender Meena who at that time was present in Ward no. 5B about refusal of UTP Ankit Gujjar then the petitioner/Narender Meena again asked warder Shiva to ask UTP Ankit Gujjar to comply with orders of Jail Superintendent but he again refused to shift. Thereafter the petitioner/Narender Meena went to Ward no. 5 where heated arguments exchanged between the



petitioner/Narender Meena and UTP Ankit Gujjar which led to fisticuff between them. It was further stated that thereafter the petitioner/Narender Meena went to *Chakkar* office and sought permission for raising alarm from Jail Superintendent which was denied. The petitioner/Narender Meena directed *sewadars* to make announcement for directing jail staff to report at Ward 5A and jail staff was directed to bring UTP Ankit Gujjar and other two inmates Gurjeet and Gurpreet to electrical panja where they were allegedly brutally beaten by the petitioner/Narender Meena and other co-accused for 30 minutes and at 2000 hours, nursing orderly heard screams/noises from electrical Panja but the learned Senior Counsl argued that it was impossible because the petitioner/Narender Meena at 19:59:57 hours called the Jail Superintendent and the petitioner/Narender Meena went to the Jail Hospital as suggested by Jail Superintendent and the petitioner/Narender Meena along with HW Naveen entered the *Deodhi* area at 20:25:20 hrs. It was further stated and argued that the petitioner/Narender Meena went outside the Jail to Deen Dayal Upadhyay (DDU) Hospital at 08:34 pm and was in DDU Hospital at 09:10 pm. It was further stated that the



petitioner/Narender Meena after treatment from DDU Hospital went to his home and came to CJ-3 on the next day i.e., on 04.08.2023 at 07:01:04 hours after being informed from DS Ved Prakash about the death of UTP Ankit Gujjar. The learned Senior Counsel in support of arguments referred in and out register of Ward no. 5B (D-77), statements of Shiva and Dharam Singh before Delhi Police (D-21), CCTV footage and other documents. The learned Senior Counsel prayed that the present application be allowed and the petitioner be granted regular bail.

7. Mr. Rajesh Kumar, Special Public Prosecutor for the respondent/CBI advanced oral arguments and also submitted written submissions. The SPP argued that despite the fact that UTP Ankit Gujjar had been brutally beaten and groaning and screaming in pain and lodged in the cell just adjacent to the Central Jail Hospital, no proper medical attention was provided to him. The witnesses are still to be examined before the trial court and the eye-witnesses have already approached the trial court with the complaint that they were being continuously threatened to change their statements. The petitioner took plea of false alibi in his favour. The perusal of charge



sheet and other evidence reflects that the petitioner is not entitled for grant of regular bail. The SPP also referred post mortem report of UTP Ankit Gujjar. The Special Public Prosecutor placed reliance on **Deepak Yadav V State of Uttar Pradesh and another**, (2022) 8 SCC 559; **Ajay Kumar Yadav V State of Uttar Pradesh and others**, 2024 SCC OnLine SC 467 and **Dudh Nath Pandey V State of Uttar Pradesh**, (1981) 2 SCC 166.

7.1 The Supreme Court in **Deepak Yadav V State of Uttar Pradesh and another** (*supra*) which was referred by SPP for the respondent observed as under:

22. As reiterated by the two-Judge Bench of this Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee* [*Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765], it is well-settled that the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant



of bail.

7.2 The Supreme Court in *Ajay Kumar Yadav V State of Uttar Pradesh and Others* held as under:

5. It is a fact that, in ordinary circumstances, we ought not to invoke our jurisdiction under Article 136 of the Constitution of India to invalidate an order granting bail to an accused. But this criteria, while dealing with the question of granting bail, would not apply in a case of custodial death, where police officials are arraigned as accused. Such alleged offences are of grave and serious nature. The role of the Court in dealing with the plea for bail in offences involving police officials has been explained by this Court in the case of *State of Jharkhand v. Sandeep Kumar* [2024 INSC 179], which was authored by one of us (Sanjay Kumar J.). This was a case in which anticipatory bail was granted to a police official accused of, inter-alia, interpolations in an FIR. It has been held in this decision:—

“9. In the light of these serious allegations made against no less than a senior police officer, an essential cog in the machinery of law enforcement, the High Court ought not to have taken a liberal view in the matter for the mere asking. Considering the position held by the respondent, even if he was suspended from service and the chargesheet had already been filed against him, the possibility of his tampering with the witnesses and the evidence was sufficiently high. That apart, grant of such relief to a police officer facing allegations of manipulating the investigation so as to favour an accused would send out a wrong signal in society. It would be against public interest.

10. No doubt, none of the provisions under which the respondent is alleged to have committed offences entail imprisonment in excess of seven years and most of them were bailable offences. Ordinarily, an accused facing the prospect of incarceration, if proved guilty of such offences, would be entitled to the relief



of pre-arrest bail. However, the same standard would not be applicable when the accused is the Investigating Officer, a police officer charged with the fiduciary duty of carrying forward the investigation to its rightful conclusion so as to punish the guilty. The 6 respondent is alleged to have failed in this fundamental duty as a police officer. This consideration must necessarily weigh in with the nature of the offences and the possible punishment therefor. Presumptions and other considerations applicable to a layperson facing criminal charges may not carry the same weight while dealing with a police officer who is alleged to have abused his office.”

7.3 The Supreme Court in **Dudh Nath Pandey V State of Uttar**

Pradesh regarding plea of *alibi* observed as under:

19. ...The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed. ...

8. It is appearing that FIR bearing no.0451/2021 was got registered under sections 302/323/341 read with section 34 IPC at P.S. Hari Nagar on the allegations as stated in the FIR and subsequently the investigation was transferred to CBI in pursuance of order dated 08.09.2021 passed by this Court in W.P.(CrI) 1558/2021 and FIR bearing no. 0451/2021 was re-registered as RC no.06(S)/2021/CBI/SC-III/ND under sections 302/323/341/34 IPC at



P.S. CBI/SC-III/New Delhi. The charge-sheet was filed before the concerned court on 01.07.2022 under sections 304/323/34 IPC wherein the petitioner was implicated as one of the accused. The supplementary charge-sheet was filed before the concerned court on 13.09.2022 against six accused including the petitioner/Narender Meena. The statements of the eye-witnesses/victims Gurjeet @ Bobby and Gurpreet @ Badal and other witnesses recorded during the investigation are clearly indicative of the involvement of the petitioner/Narender Meena in commission of the alleged offences. The polycarbonate lathis which were recovered during the investigation also reflect that the blood traces found on the said polycarbonate lathis were matching with the DNA of the deceased UTP Ankit Gujjar and other eye-witnesses/victims. The cause of death of UTP Ankit Gujjar was stated to be multiple anti-mortem injuries like abrasions, contusions, lacerations present all over the body and subarachnoid haemorrhages in brain which were blunt force injuries caused by blunt objects like rod, baton or lathi etc. The cause of death of UTP Ankit Gujjar was “haemorrhage consequent upon cumulative effect of multiple blunt force injuries sustained to the



body”. The eye-witnesses/victims have also made allegations of being threatened by the accused persons including the petitioner/Narender Meena to change their statements. There is factual force in arguments advanced by the SPP for the respondent/CBI that the role of the petitioner/Narender Meena has been established in commission of the crime as 04 eye-witnesses including Gurjeet @ Bobby and Gurpreet @ Badal saw him beating the deceased UTP Ankit Gujar and the polycarbonate *lathis* stated to be used to beat the deceased UTP Ankit Gujar and other eye-witnesses/victims were found to be containing the blood traces matching with the DNA of the deceased UTP Ankit Gujar as well as surviving victims/eye-witnesses Gurjeet @ Bobby and Gurpreet @ Badal. It is also surfacing that the eye-witnesses have also complained about being threatened by the accused including the petitioner/Narender Meena to change their statements and they have approached the Witness Protection Committee for their protection. The learned Senior Advocate primarily advanced argument on basis of plea of *alibi* but it is apparent that the petitioner/Narender Meena was present within jail premises and as such said plea of *alibi* is not



providing much help to the petitioner.

9. The Supreme Court in **Mahipal V Rajesh Kumar Alias Polia and another**, (2020) 2 SCC 118 observed as under:

14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case by case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.



9.1 The Supreme Court in **Brijmani Devi V Pappu Kumar and another**, (2022) 4 SCC 497 on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused, observed as follows:

35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.

10. The primary argument advanced by the learned Senior Counsel for the petitioner for grant of bail to the petitioner is the plea of *alibi* i.e. the petitioner could not have committed the alleged offences as the petitioner was inside the Internal Jail only for 25 minutes and it is practically impossible for him to call the jail staff with lathis to Ward-5A, beat the inmates for 10 minutes, then take them to



electrical panja and beat them for about 45 minutes there. The Special Public Prosecutor for the respondent refuted this argument by stating that the petitioner/Narender Meena instead of getting the injured inmates medically examined took the opportunity to create a false *alibi* in his favour and placed reliance on **Dudh Nath Pandey V State of Uttar Pradesh**. It is also pertinent to mention here that the plea of *alibi* is considered to be a defence which is to be raised at the stage of trial and not at the stage of consideration of the application for grant of regular bail. The arguments advanced by the learned Senior Advocate for the petitioner are without any force particularly in view of statements of eye-witnesses recorded during investigation.

11. It is also stated in bail application that the investigation qua the petitioner was already complete and the prosecution is relying on 150 witnesses, 159 documents and 24 exhibits and as such the trial would take considerable time to conclude. The Supreme Court in **Manish Sisodia V Directorate of Enforcement**, 2024 SCC Online SC 1920 expressed concern that by keeping under trial prisoners behind bars for an unlimited period in the hope of speedy completion of trial



would deprive his fundamental right to liberty under Article 21 of the Constitution. It was observed as under:-

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that “bail is rule and jail is exception”.

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

55. As observed by this Court in the case of Gudikanti Narasimhulu (supra), the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can



be addressed by imposing stringent conditions upon the appellant.

The Supreme Court again in **Kalvakuntla Kavitha V Directorate of Enforcement** reiterated above principles laid down in **Manish Sisodia V Directorate of Enforcement**. It is pertinent to mention that UTP Ankit Gujar died while he was in judicial custody. The post mortem report reflects multiple ante mortem injuries on body of UTP Ankit Gujar. The trial court in impugned order also observed that the petitioner tried to influence witnesses and larger interest of the society has to be given preference over the liberty of the accused. There is nothing on record to show that the delay in trial if any is caused by the respondent/CBI. It is also worth mentioning here that the petitioner/Narender Meena preferred an application before the Principal District and Sessions Judge cum Special Judge (PC Act), Rouse Avenue Courts, New Delhi seeking transfer of the case which was ordered to be dismissed vide order dated 26.08.2023. Thereafter, the petitioner/Narender Meena preferred a Transfer Petition bearing no. TR.P. (CRL.) 112/2023 before this Court which was also dismissed vide order dated 31.08.2023. The petitioner/Narender Meena preferred SLP (Crl.) no.12055/2023



before the Supreme Court to impugn order dated 31.08.2023 and the Supreme Court vide order dated 06.10.2023 directed the trial court to defer the proceedings against the petitioner /Narender Meena. It is informed SLP (Crl.) no.12055/2023 is already disposed of.

12. After considering all facts and keeping in view the nature and gravity of the offences and the likelihood of the petitioner influencing the witnesses/tampering with the evidence, no ground for bail is made out. Hence, the present bail application is dismissed.

13. It is made clear that nothing in this order shall be construed as an opinion on the merits of the case. Copy of this order be sent to trial court for information.

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

SEPTEMBER 26, 2024
AM