

Court No. - 67

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 17263 of 2020

Applicant :- Aniket Dixit

Opposite Party :- State of U.P.

Counsel for Applicant :- Dileep Kumar(Senior Adv.),Rajrshi Gupta,Saurabh Chaturvedi,Shambhawi Shukla

Counsel for Opposite Party :- G.A.,Gopal Misra,Ravindra Verma

Hon'ble Rahul Chaturvedi,J.

Heard Shri I.K. Chaturvedi, learned Senior Advocate assisted by Shri Saurabh Chaturvedi, learned counsel for applicant; Shri Shiv Mangal Singh, holding brief of Shri Gopal Misra, learned counsel for the informant and Mohd. Shoeb Khan, learned A.G.A. Perused the record.

This is the second bail application on behalf of applicant Aniket Dixit, who is languishing in jail since 04.04.2018 in connection with Case Crime No.375 of 2018, u/s 306 I.P.C., Police Station-Kalyanpur, District Kanpur Nagar.

Applicant's first bail application was rejected by this Court vide order dated 12.9.2018 on merits with the following directions :-

"The trial court is expected to gear-up the trial and conclude the same as early as possible, if possible within one and half years.

Keeping in view the mandate of Section 309 Cr.P.C. as reiterated in the case of State of U.P. vs. Shambhu Nath Singh [2001(4) SCC 667], Mohd. Khalid vs. State of West Bengal [(2002) 7 SCC] and Vinod Kumar vs. State of Punjab [(2015) 3 SCC 220].

Office is directed to serve copy of this order to the learned AGA as per rules of the Court. it is directed to transmit the copy of this order to the concerned court within a fortnight for necessary compliance. "

Shri I.K. Chaturvedi, learned Senior counsel states that the

applicant is facing incarceration since 4.4.2018 as an undertrial and the trial is yet to see the final day. Keeping in view the extremely slow progress in the trial, the applicant Aniket Dixit has moved the present second bail application on 17.3.2020 which is for consideration before this Court. Shri Chaturvedi's basic argument is only period of incarceration undergone by the applicant as undertrial, except this, there is not a whisper with regard to merit of the case.

After perusal of order-sheet of the trial court, it indicates that the bail rejection order dated 12.9.2018 was served upon the trial court on 16.7.2019, and as such, the above bail rejection order and the period to conclude the trial on the priority basis was well within the knowledge of the learned Trial Court. But since then i.e. July 2019 till date, within a span of 5-6 years, after making great efforts the learned Trial Judge has succeeded to examine only 5 prosecution witnesses.

It has also been mentioned by Shri I.K. Chaturvedi, learned counsel for applicant that, rest of the co-accused persons, who are either similarly placed or the real author of said abetment, were already bailed out by Coordinate Bench of this Court on different occasions. It is urged by learned counsel for applicant that, the applicant is a student and he in his formative period of life is in jail from last 6-7 years. This by itself, is highly unjust for an undertrial of abetting to commit suicide whose maximum period of punishment for offence u/s 306 I.P.C. is 10 years. It is further submitted by learned counsel for applicant that applicant has already served out more than half of the maximum punishment provided under Section 306 I.P.C. but the trial is yet to see its final day.

This Court is literally shocked and stunned to see the utter and deliberate defiance of this Court's earnest request to conclude the trial within a period of one and half years. From the order-sheet of the trial court it seems that the learned Trial Judge is generously allowing the various applications of "Hajiri Mafi". This seems to be utter defiance and disregard to Court's earnest request which was well within the knowledge of learned Presiding Judge. Only 5 witnesses have been examined so far. Perturbed by such a callous attitude of learned Trial Judge, this Court on 05.4.2024 has formulated a questionnaire seeking written explanation from the concerned trial court.

On earlier occasion the Court was in receipt of said written explanation dated 15.4.2024 of the trial court whereby he has given a detailed report, endorsing the fact, that only 5 prosecution witnesses have been examined so far. It is further mentioned in the said explanation, that since the present incumbent has assumed the court in the month of May 2023 and has succeeded in examining only 3 witnesses in his tenure. Whereas, earlier, during 02.11.2019 to 03.05.2023 in the span of 3 years and 10 months, only two witnesses were examined. The charges were framed against the applicant on 02.11.2019. From the report given by the learned Trial Judge, it is evident that one of the prosecution witness Vinod Kumar Mishra, Sub Inspector is rendering non-cooperation in early conclusion of trial and the court have issued bailable warrants against the said erring Sub-Inspector.

This is simply an unacceptable and deplorable conduct on the part of Sub Inspector Vinod Kumar Mishra. Being a government servant he is supposed to render his fullest co-operation and support as a custodian of the law and its proceedings.

If any of the prosecution witnesses is rendering non-cooperation or creating hindrances in the early conclusion of trial, the trial court is not powerless. The trial court has ample powers provided under the Code of Criminal Procedure to ensure the attendance of witnesses. Besides they can issue bailable warrants or non bailable warrants in Chapter-VI, Part (C) which provides proclamation and attachment. The learned trial court, in a given circumstance, can pass a suitable order for attaching the salary of any government servant or issue non-bailable warrants against such witnesses who is government servant.

From the report of learned Trial Judge it is clear that Mr. Vinod Kumar Mishra, Sub Inspector is not co-operating in conclusion of trial. It is true that in our judicial system we often bank upon the witnesses and their testimonies, but, if the witnesses are not permitting the trial to proceed or take this procedure for their joyride, at the same time the courts are not powerless to ensure the proceeding by using all coercive methods available under the scheme of Criminal Procedure.

At the end, the learned trial Judge has assured this Court that he shall make necessary endeavours to conclude the trial within next six months. This Court is not in agreement with this period sought by the learned trial court for conclusion of trial. We have already wasted almost 6 years' time and now granting six months more would amount to mockery of justice.

Under the circumstances, it is directed that; (i) the concerned trial court shall hold the trial on day to day basis without granting any adjournment to any of the parties or their witnesses; (ii) except Sundays and other public holidays, the trial court has to take up the matter either in the open court or in his Chambers in the event of

any strike or abstinence from work by the lawyers and must conclude the trial by 31st August, 2024.

So far as the present applicant, Aniket Dixit is concerned, without touching the merit of the case and keeping in view that he has already undergone six years incarceration as an undertrial, his second bail application stands allowed on the following conditions.

Let the applicant **Aniket Dixit** be released on bail in aforesaid case crime number on his furnishing a personal bond and two heavy sureties, one of which shall be his close relative, each in the like amount to the satisfaction of the court concerned subject to the following conditions :

(i) 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.

(ii) THE APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS COUNSEL. IN CASE OF HIS ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., 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 IPC.

(iv) 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his 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 condition mentioned above.

If the learned Trial Court does not conclude the trial by 31st August, 2024, an adverse inference shall be drawn against the learned Presiding Officer.

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 :- 24.4.2024
M. Kumar