

**Court No. - 11**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 6869 of 2019

**Applicant :-** Anokhi Lal Second Bail

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Dinesh Chandra Tewari, Arun Sinha

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajesh Singh Chauhan, J.**

1. Heard Sri Arun Sinha, learned counsel for the applicant and Sri Balkeshwar Srivastava, learned Additional Government Advocate for the State.

2. This is the second bail application as the first bail application bearing Bail Case No.7160 of 2018 (Anokhi Lal vs. State of U.P.) has been rejected by Hon'ble Anant Kumar, J. (since retired) on 23.04.2019.

3. While rejecting the first bail application, the Hon'ble Court was pleased to observe as under:-

*"However, at this stage, learned counsel for the applicant states that a direction may be given to the trial court for expeditious disposal of the trial. Accordingly, trial court is directed to expedite the trial and make an endeavour to conclude the trial, within a period of five months."*

4. Sri Sinha has submitted that despite the specific direction of this Court vide order dated 23.04.2019 to conclude the trial within a period of five months, about three years period have passed but the examination of PW-2 has not been concluded inasmuch as such prosecution witness is a fact witness, who is not co-operating with the trial proceedings.

5. Sri Sinha has filed certified copy of orders of trial court for the last one year, the same are taken on record. Those certified copies shall be kept properly with this paper-book.

6. Sri Sinha has submitted that the present applicant is languishing in jail since 15.04.2018 in Case Crime No.36 of 2018, under Sections 498-A & 304-B I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station-Khargupur, District-Gonda. He has further submitted that in the impugned First Information Report (in short F.I.R.), the entire family of the in-laws of the victim has been implicated. The present applicant is

not a direct family member of the in-laws of the victim as he is a cousin brother of husband of the victim and such fact has been shown in the pleadings as well as in the family register which has been annexed in the bail application.

**7.** Sri Sinha has further submitted that in the dying declaration, the allegation has been levelled against the mother-in-law (Smt. Munni Devi) and the present applicant. However, as per statement of the family members of the victim the main allegation has been levelled against the mother-in-law (Smt. Munni Devi).

**8.** As per the prosecution story, the victim had been brought to the hospital by her husband (Vinay Kumar Awasthi), and the victim died in the hospital. As per the family members of the victim, all the family members including the husband of the victim were involved.

**9.** Attention has been drawn by learned counsel for the applicant towards Annexure No.5 of the bail application, which is a bail order of mother-in-law (Smt. Munni Devi) dated 05.07.2019 passed by this Court in Bail Case No.2035 of 2019 (Smt. Munni Devi vs. State of U.P.) whereby this Court granted bail to the mother-in-law (Smt. Munni Devi).

**10.** Further attention has been drawn by learned counsel for the applicant towards Annexure No.6 of the bail application, which is a bail order of the husband of the victim dated 20.02.2019 passed by this Court in Bail Case No.6236 of 2018 (Vinay Kumar Awasthi vs. State of U.P.).

**11.** Sri Sinha has submitted that if the allegations of the family members of the victim are considered on its face value, then all the family members were involved but the mother-in-law (Smt. Munni Devi) and the husband (Vinay Kumar Awasthi) have been granted bail. Further, if dying declaration is considered on its face value, then despite having similar allegations the mother-in-law (Smt. Munni Devi) has been granted bail. Besides in various statements of family members of the victim the main culprit was the mother-in-law (Smt. Munni Devi).

**12.** Sri Sinha has submitted that however all the aforesaid arguments were available at the time of rejection of first bail application of the present applicant but since the mother-in-law (Smt. Munni Devi) has been granted bail subsequent to the rejection of the bail application of the present applicant, therefore, this may be considered as fresh ground.

**13.** Sri Sinha has further drawn attention of this Court towards

supplementary affidavit filed on 12.07.2021 showing Annexure No.SA-3, which is a statement of PW-2 dated 04.04.2019 to show that despite the specific direction being issued by this Court on 23.04.2019 to conclude the trial within a period of five months, there is no progress in the trial. On last date of hearing of the present bail application on 24.03.2022 Sri Sinha prayed sometime to show the current status of trial, therefore, he was granted time. Today, he has provided the certified copy of the orders of the trial court for the last one year to show the progress of trial.

**14.** As per the certified copies of orders of the trial court, PW-2 is absent since 03.04.2021 and on 03.04.2021 a bailable warrant of Rs.10,000/- has been issued against him for his appearance. The latest order dated 23.03.2022 provides that for evidence/examination of PW-2 the next date has been fixed for 07.04.2022. The perusal thereof clearly reveals that the examination of PW-2 could not be completed since April, 2019.

**15.** Sri Sinha has shown the charge-sheet which indicates that there are 19 prosecution witnesses. Presently, the examination of PW-2 has not been completed.

**16.** Therefore, Sri Sinha, learned counsel for the applicant has submitted that despite the specific direction of this Court vide order dated 23.04.2019 to conclude the trial within a period of five months, there is no possibility to conclude the trial in near future inasmuch as out of 19 prosecution witnesses even examination of PW-2 has not been concluded. Therefore, this ground may be considered as a fresh ground to consider the second bail application. Besides, after rejection of first bail application of the present applicant on 23.04.2019 the main accused (Smt. Munni Devi) i.e. mother-in-law of the victim has been granted bail on 05.07.2019, therefore, this may also be considered as a fresh ground.

**17.** Sri Sinha has placed reliance upon the dictum of Hon'ble Apex Court rendered in re: **Union of India vs. K.A. Najeeb** reported in **AIR 2021 Supreme Court 712**. Para 16 of the judgment is being reproduced herein below:-

*"This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established*

*before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."*

**18.** The Apex Court in the case of ***Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation*** passed in ***Criminal Appeal No. 693 of 2021 (Arising out of SLP (Crl) 3610 of 2020)*** has observed as under :

*"On consideration of the matter, we are of the view that pending the trial we cannot keep a person in custody for an indefinite period of time and taking into consideration the period of custody and that the other accused are yet to lead defence evidence while the appellant has already stated he does not propose to lead any evidence, we are inclined to grant bail to the appellant on terms and conditions to the satisfaction of the trial court."*

**19.** In the aforesaid cases the Hon'ble Apex Court has held that if there is no possibility to conclude the trial in near future and the accused applicant is in jail for a substantial long period then a period of incarceration may be considered as a fresh ground.

**20.** Sri Sinha has submitted that since the charge-sheet has already been filed in this case and the present applicant is co-operating with the trial proceedings and if there is any lapse in not concluding the examination of PW-2 it is no fault on the part of the present applicant but on the part of the prosecution, therefore, he may be released on bail.

**21.** Learned counsel for the applicant has undertaken on behalf of the present applicant that the applicant shall not misuse the liberty of bail, if so granted by this Court and shall abide by all terms and conditions of the bail order and shall cooperate with the trial proceedings.

**22.** On the other hand, learned Additional Government Advocate has opposed the prayer for bail by submitting that since the specific allegations has been levelled against the present applicant by the victim herself, therefore, his bail application may be rejected.

**23.** However, on being confronted on the fact that on the basis

of statement of family members of the victim as well as of the victim the allegations have been levelled against the mother-in-law (Smt. Munni Devi) who has been granted bail and the family members of the victim have also levelled allegations against the husband, who has also been granted bail, the learned Additional Government Advocate has submitted that those orders being a matter of record, therefore, he has nothing to say.

**24.** Having considered the fact that despite the specific direction being issued by this Court vide order dated 23.04.2019 to conclude the trial within a period of five months but about three years period have passed and the progress of trial is the same as it was in the month of April, 2019 when the first bail application was rejected. As a matter of fact, there is no progress of trial as such. The PW-2 is not co-operating with the trial and has absconded for quite sometime. The period of incarceration of the present applicant in jail since 15.04.2018 is also worth considering at this stage when there is no possibility to conclude the trial in near future inasmuch as out of 19 PWs the examination of PW-2 is going on. Besides, all the family members of the victim including the victim herself have levelled specific allegation of torture etc. to the mother-in-law (Smt. Munni Devi), who has been granted bail subsequent to the rejection of the first bail application of the present applicant. Hence, these grounds may be considered as fresh ground to consider the second bail application.

**25.** Therefore, in the given circumstances and considering the dictum of Hon'ble Apex Court in re: ***K.A. Najeeb (supra)*** and ***Paras Ram Vishnoi (supra)***, the aforesaid grounds are considered as fresh to consider the second bail application, therefore, without expressing any opinion on merits of the case, the instant second bail application of the present applicant is ***allowed.***

**26.** Let applicant -Anokhi Lal, be released on bail in aforesaid case crime number on his furnishing a personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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 of the Indian Penal Code.

(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. is issued and the applicant fail 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 of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

(v) The applicant shall not leave the country without prior permission of the Court.

27. Before parting with it is expected that the trial shall be concluded with expedition. Further, the learned trial court may take all coercive measures as per law if either of the parties do not co-operate in the trial properly. The learned trial court shall fix short dates to ensure that trial is concluded at the earliest.

**Order Date :- 30.3.2022      [Rajesh Singh Chauhan,J.]**  
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