

A.F.R.

Court No. - 13

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8561 of 2019

Applicant :- Kuldeep Second Bail

Opposite Party :- State of U.P.

Counsel for Applicant :- Mrs.Suniti Sachan,Divya Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

1. This case is taken up in the revised call.
2. Heard Ms. Divya Tripathi, learned counsel for the applicant, Sri Anirudha Singh, learned A.G.A.-I for the State and perused the record.
3. The applicant, Kuldeep, has moved this second bail application seeking bail in Case Crime No.189 of 2016, under Sections 498-A, 304-B, 302 I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station Achalganj, District Unnao.
4. The first bail application was rejected by Hon'ble Mr. Justice Karunesh Singh Pawar vide order dated 16.04.2019 passed in Criminal Misc. Case No. 3503 (B) of 2017. This second bail application has been placed before this regular Bench in the light of Hon'ble The Chief Justice's order dated 20.10.2021 as the instant bail application has been released by Hon'ble Karunesh Singh Pawar, J.
5. While rejecting the first bail application on 16.04.2019, a co-ordinate Bench of this Court was pleased to observe as under:

“Heard learned counsel for the applicant, learned AGA for the State and perused the record.

The contention of the learned counsel for the applicant is that the applicant is falsely implicated in the present case. There was no demand of dowry made by the applicant from his wife. It is contended that there is no evidence to prove the said allegations made in the FIR regarding the demand of dowry and the cruelty that has been alleged in the FIR thus, the FIR is false. The postmortem report as well as the statement of witnesses does not supported the case of prosecution. The deceased has committed suicided as she was depressed and the applicant and his family members have no role in the alleged incident. There is no previous criminal history of the applicant. The applicant is in jail since August, 2016 and the applicant will not misuse the liberty if he is enlarged on bail. It is lastly contended that the co-accused mother and father of the applicant have been granted bail by this Court which is annexed as Annexure-5 to this bail application.

Learned counsel for the complainant and learned A.G.A. opposed the prayer for

bail and has submitted that parity with the bail order of mother and father cannot be claimed by the present accused-applicant and their bail were granted on different ground which are not available to the present accused-applicant (husband). It is contended that there are antemortem injuries one bite mark and another is abraded contusion apart from ligature mark which has not been explained. It is a heinous offence, both the wife of the applicant and the daughter were died. In this case under Section 304B IPC, the burden of proof is on the accused-applicant. The applicant-accused has miserably failed to give any explanation of murder of both the deceased wife and minor daughter. The statement of Neetu Gupta, the complainant corroborates the prosecution story. The mother of the deceased has also corroborates the prosecution story.

The learned counsel for the applicant submitted that deceased family members i.e., Ritu (sister), Amit (brother), Ram Sevak (uncle) and Raja Ram (another uncle) had also committed suicide and Ram Swaroop (father) has also died due to heavy consumption of alcohol. Therefore, the deceased was having a family history of suicide.

In reply to this, the learned AGA has submitted that it has no co-relation with the present case and moreover the two persons have lost their life in this case i.e., one is deceased Rajani and another is her minor daughter Yashi.

Without expressing any opinion on the merits of the case and considering the submissions advanced, I find that no good ground is made out for enlarging the applicant on bail.

The bail application of the applicant Kuldeep involved in Case Crime No. 189 of 2016, under Section 498A, 304B, 302 IPC and 3/4 Dowry Prohibition Act, Police Station Achalganj, District Unnao is, accordingly, rejected. ”

6. Learned counsel for the applicant has submitted that three years period have been passed from the order dated 16.04.2019 but the trial has not been concluded.

7. Learned counsel for the applicant has submitted that she is conscious about the fact that this is the second bail application, therefore, she cannot raise those grounds which could have been taken in the first bail application but she is pressing the present application only on the ground that the applicant is in jail for about 6 years yet the trial has not been concluded.

8. Apart from above submissions, the learned counsel for the applicant also submits that applicant is in jail since 12.08.2016 and has already undergone a substantial period of about six years in jail and till date trial has not yet been concluded.

9. Learned counsel for the applicant further submits that in compliance of order dated 30.05.2022 passed by this Court, she has filed the supplementary affidavit dated 02.06.2022 which is on record and in para 5 of the supplementary affidavit filed in support of the bail application it has been mentioned that out of 18 prosecution witnesses

only 02 prosecution witnesses have been examined and charge sheet has been filed on 01.10.2016 and further submits that it will take much time for conclusion of trial. Therefore, in the light of the dictum of the Hon'ble Apex Court in re; **Union of India vs. K.A. Najeeb** reported in **AIR 2021 Supreme Court 712 and Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation** passed in **Criminal Appeal No.693 of 2021 (Arising out of SLP (CrI) No.3610 of 2020)**, wherein it has been held that if the accused person is in jail for substantially long period and there is no possibility to conclude the trial in near future, the bail application may be considered. Besides, learned counsel for the applicant has referred the dictum of the **Hon'ble Apex Court in re; Gokarakonda Naga Saibaba v. State of Maharashtra, (2018) 12 SCC 505**, wherein it has been held that if all fact / material witnesses have been examined, the bail application of the accused may be considered and they were entitled for bail. Para-16 of the case **K.A.Najeeb** (supra) is being reproduced here-in-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."

10. The Apex Court in the case of **Paras Ram Vishnoi** (supra) 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."

11. In support of her contention, learned counsel for the applicant has placed reliance of Hon'ble Apex Court judgment in the case of **Kamal Vs. State of Haryana, 2004 (13) SCC 526** and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under :-

"2. This is a case in which the appellant has been convicted u/s 304-B of the India Penal Code and sentenced to imprisonment for 7 years. It appears that so far the appellant has undergone imprisonment for about 2 years and four months. The High Court declined to grant bail pending disposal of the appeal before it. We are of the view that the bail should have been granted by the High Court, especially having regard to the fact that the appellant has already served a substantial period of the sentence. In the circumstances, we direct that the bail be granted to the appellant on conditions as may be imposed by the District and Sessions Judge, Faridabad."

12. Learned counsel for the applicant has also placed reliance of Hon'ble Apex Court judgment in the case of **Takht Singh Vs. State of Madhya Pradesh, 2001 (10) SCC 463**, and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under:-

"2. The appellants have been convicted under Section 302/149, Indian Penal Code by the learned Sessions Judge and have been sentenced to imprisonment for life. Against the said conviction and sentence their appeal to the High Court is pending. Before the High Court application for suspension of sentence and bail was filed but the High Court rejected that prayer indicating therein that the applicants can renew their prayer for bail after one year. After the expiry of one year the second application was filed but the same has been rejected by the impugned order. It is submitted that the appellants are already in jail for over 3 years and 3 months. There is no possibility of early hearing of the appeal in the High Court. In the aforesaid circumstances the applicants be released on bail to the satisfaction of the learned Chief Judicial Magistrate, Sehore. The appeal is disposed of accordingly."

Learned counsel for the applicant further submits that ratio of law applicable in aforesaid cases is also applicable in the case of the applicant, therefore, the applicant be enlarged on bail by this Court sympathetically.

13. Several other submissions regarding legality and illegality of the allegations made in the F.I.R. have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused, have also been touched upon at length. It has been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. The applicant undertakes that in case he is released on bail he will not misuse the liberty of bail and will cooperate in trial. It has also been pointed out that the applicant is not having any criminal history and he is in jail since 12.08.2016 and that in the wake of heavy

pendency of cases in the courts, there is no likelihood of any early conclusion of trial.

14. Learned A.G.A. opposed the prayer for bail by submitting that applicant is involved in heinous crime and further submitted that in compliance of this Court's order dated 04.01.2022, a communication dated 12.01.2022 of Additional Sessions Judge, Court No.1, Unnao was received in the office and from perusal of the same, it transpires that only two prosecution witnesses were examined. The said letter is on record.

15. On being confronted on the point about the progress of trial and period of incarceration of the present applicant, learned Additional Government Advocate has submitted that this is being a matter of record, therefore, he has nothing to say.

16. After perusing the record in the light of the submissions made at the Bar and after taking an overall view of all the facts and circumstances of this case, at the very outset, this Court anguish towards the poor progress of trial, the trial must have been concluded by now and the learned trial court is having powers to take coercive method to conclude the trial and also armed with the provisions of Section 309 Cr.P.C., therefore, this Court is unable to comprehend as to how there is no good progress in the trial, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also the absence of any convincing material to indicate the possibility of tampering with the evidence, and considering that applicant is in jail since 12.08.2016 and the trial has not yet been concluded and out of 18 witnesses only two witnesses have been examined as per the communication dated 12.01.2022 of the Additional Sessions Judge, Court No.1, Unnao and the averment made in para 5 of the supplementary affidavit by the applicant as well as considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the cases of **Dataram Singh vs. State of U.P. and another**, reported in (2018) 3 SCC 22, **Union of India vs. K.A. Najeeb** reported in AIR 2021 Supreme Court 712 and **Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation** passed in **Criminal Appeal No.693 of 2021 (Arising out of SLP (Crl) No.3610 of 2020)**, **Gokarakonda Naga Saibaba v. State of Maharashtra**, (2018) 12 SCC 505, **Kamal Vs. State of Haryana**, 2004 (13) SCC 526 and **Takht Singh Vs. State of Madhya Pradesh**, 2001 (10) SCC 463, this Court is of the view that the applicant may be enlarged on bail.

17. The prayer for bail is granted. The application is **allowed**.

18. Let the applicant, **Kuldeep**, involved in Case Crime No.189 of 2016, under Sections 498-A, 304-B, 302 I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station Achalganj, District Unnao, be enlarged on bail on his executing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned on the following conditions :-

(i) The applicant will not make any attempt to tamper with the prosecution evidence in any manner whatsoever.

(ii) The applicant will personally appear on each and every date fixed in the court below and his personal presence shall not be exempted unless the court itself deems it fit to do so in the interest of justice.

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(v) In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the 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 of the Indian Penal Code.

(vi) 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

(vii) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad or certified copy issued from the Registry of the High Court, Allahabad.

(viii) The concerned Court/ Authority/ Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

19. It may be observed that in the event of any breach of the aforesaid conditions, the court below shall be at liberty to proceed for the cancellation of applicant's bail.

20. It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merit of the case.

21. Being a peculiar case, the trial court is directed to conclude the trial of this case preferably, within a period of six months from today without granting any unnecessary adjournment to either parties except there is any legal impediment or order of higher Court.

Order Date :- 18.7.2022

Saurabh