

Court No. - 11**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 11785 of 2019**Applicant :-** Rameshwar Pandey Third Bail**Opposite Party :-** State of U.P.**Counsel for Applicant :-** Anil Kumar Tripathi**Counsel for Opposite Party :-** G.A.**Hon'ble Rajesh Singh Chauhan,J.**

1. Heard Sri Anil Kumar Tripathi, learned counsel for the applicant and learned A.G.A. for the State.
2. This case was listed on 15.3.2022 and on that date this Court has passed the following order :

"Heard Sri Anil K. Tripathi, learned counsel for the applicant and learned AGA.

Sri Anil K. Tripathi has filed a questionnaire dated 12.2.2020 in the present case to apprise the Court that no prosecution witness has been examined, however, charges have been framed on 13.11.2018, the same is taken on record.

This is the third bail application. First and second bail applications have been rejected by Hon'ble Prashant Kumar, J. on 22.2.2017 and 17.5.2018 vide Criminal Misc. Bail Applications No.7312 of 2015 and 7137 of 2017 respectively.

On being confronted on the point as to what is the fresh ground to consider the third bail application, Sri Anil K. Tripathi has submitted that the present applicant is in jail since 27.5.2015 in Case Crime No.840 of 2015, under Sections 302, 504 & 506 IPC, Police Station Ikauna, District Shrawasti and there is no possibility to conclude the trial in near future, therefore, considering the fundamental right of the applicant enshrined under Article 21 of the Constitution of India, he may be released on bail.

I have noted that vide order dated 17.5.2018, the Hon'ble Court has directed the Chief Judicial Magistrate, Bahraich to commit the case to the Court of Session immediately within a period of one month. It appears that after the aforesaid order, the case has been committed to the Court of Session, who has framed the charges on 13.11.2018.

List this case on 31.03.2022 to enable the District and Sessions Judge, Bahraich to provide the status report of the trial. Such status report

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should be exhaustive indicating therein about the relevant dates of the trial.

The Registry of this Court shall intimate this order to the District and Sessions Judge, Bahraich within three working days for compliance of the direction.

On the next date, after considering the status of the trial, the present bail application may be disposed of finally and learned counsel for the applicant as well as learned AGA shall prepare the case on the point as to whether inordinate delay in concluding the trial may be considered as one of the fresh grounds to consider the bail application if two bail applications have already been rejected."

3. In compliance of the aforesaid order the District Judge, Bahraich has provided a detailed and exhaustive status report dated 28.3.2022 relating to the trial proceedings.

4. The learned counsel for the applicant has fairly submitted that he is aware about the fact that he cannot take any ground in third bail application which was available with him at the time of first bail application or second bail application. Therefore, he has restrained himself to raise factual arguments and grounds of the bail except that the present applicant is in jail since 27.5.2015 in Case Crime No. 840 of 2015 u/s 302, 504, 506 IPC, P.S. Ikauna, District Shrawasti. He has further submitted that the present applicant has been falsely implicated as he has not committed any offence as alleged by the prosecution in the F.I.R.

5. Sri Tripathi has submitted that he has also received instructions in respect of status of the trial and as per his information after the committal of the trial to the sessions on 7.8.2018 the fact witnesses remained absent till 28.10.2021 and the bailable and non-bailable warrants were issued against them. He has further submitted that after the issuance of bailable warrants and Non-Bailable Warrants on several dates the fact witnesses namely, Bablu Pandey Raj Kumari and Kanhaiya Lal Pandey appeared before the learned trial court. Besides, one more witness Dharam Raj also appeared before the learned trial court.

6. So as to verify the aforesaid submission of Sri Tripathi, I perused the status report dated 28.3.2022 which clearly reveals that all the fact witnesses i.e. P.W. 1 Bablu Pandey, P.W. 2 Raj Kumari and P.W. 3 Dharam Raj have been finally examined. Further, the chief-examination of another prosecution witness no. 4 Kanhaiya Lal Pandey has been completed and his part cross-examination has also been completed. Further, the prosecution has shown its willingness not to examine witness Umesh Kumar Pandey and Yugal Sharan Pandey. It has been further indicated that the examination of some more prosecution witnesses is yet to take place, thereafter the formal witnesses e.g. Doctor who has done postmortem examination, chick writer of the F.I.R. and investigating officer are to be examined. After their examination the defence witnesses would be examined and the trial would be finally concluded adopting legal requirements.

7. Sri Tripathi has submitted that since all fact witnesses have been examined and there is no possibility that the trial would be concluded in near future, therefore. the period of incarceration of present applicant i.e. w.e.f. 27.5.2015, about seven years may be considered to grant bail.

8. Sri Tripathi has also drawn attention of this Court towards para 23 of the bail application wherein he has categorically indicated that the present applicant is having no criminal history and such fact has not been disputed in the counter affidavit. Therefore, the fact that the present applicant is not a past criminal may be considered while granting him bail. In support of his aforesaid submission the reliance has been placed in para 4 of the dictum of Hon'ble Apex Court in re: **Gokarakonda Naga Saibaba v. State of Maharashtra, (2018) 12 SCC 505**, has held in para-4 as under:-

"4. Having given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the rival parties, specially the undisputed position that the petitioner has never been accused of having misused the concession of bail, we are of the view, that the submission made by the learned counsel for the respondent is extremely unfair. Since all the material witnesses have been examined and cross-examined, the release of the petitioner on bail ought not to have been opposed, especially keeping in mind the medical condition of the petitioner."

(emphasis supplied)

9. Besides, the reliance has also been placed on a recent decision of this Court in re; **Anokhi Lal vs. State of U.P. passed in Criminal Misc. Bail Application No. 6869 of 2019** wherein almost aforesaid facts and circumstances were considered while granting bail in second bail application. In the aforesaid order the dictum of Apex Court in re: **Union of India vs. K.A. Najeeb, AIR 2021 Supreme Court 712** and in re: **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)** have been followed.

10. Sri Tripathi has placed reliance on the judgment of Hon'ble Apex Court 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."

11. Sri Tripathi has further placed reliance on the dictum of Hon'ble Apex Court in re: **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)** wherein the Hon'ble Court 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."

12. Sri Tripathi has also submitted that there is no fault on the part of the present applicant in not concluding the trial at the earliest and the specific fault is attributable to the fact witness and other witnesses who remained absent till 28.10.2021 w.e.f. 7.8.2018 when the case was committed to the sessions, therefore, while considering bail application of the present applicant this fact may also be considered. However, Sri Tripathi has given undertaking on behalf of applicant that the applicant shall not misuse the liberty of bail and shall cooperate with the trial proceedings and shall abide by all terms and conditions of bail, if granted.

13. Learned A.G.A. opposed the prayer for bail by submitting that since two bail applications of the present applicant have been rejected by this Court, therefore, present third bail application may not be allowed as no new ground has been shown to this Hon'ble Court to consider his bail.

14. However, on being confronted on the point that present applicant is in jail for almost seven years and the fact witnesses and other prosecution witnesses were not cooperating with the trial proceedings, resultant thereof the trial could not be concluded despite being committed on 7.8.2018 and the status report was provided by the District Judge does not indicate any fault on the part of the applicant, learned AGA has submitted that since the aforesaid situation being a matter of record, therefore, he has nothing to say.

15. Without entering into the merits of the case and considering the period of incarceration of the present applicant w.e.f. 27.5.2015, almost seven years and there are total 15 prosecution witnesses out of them all fact witnesses have been examined and examination of other witnesses is almost complete except the examination of formal witnesses and there is no likelihood of conclusion of trial in near future and the non-cooperation of the fact witnesses / prosecution witnesses is apparent on

the status report of the trial dated 28.3.2022, therefore, the aforesaid grounds may be considered as a fresh ground to grant bail to the present applicant while deciding his third bail application. Besides, the dictums of Apex Court in re : ***Gokarakonda Naga Saibaba v. State of Maharashtra, (supra), Union of India vs. K.A. Najeeb (supra) and Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation (supra)*** are being considered as those judgments, to me, are supporting the submission of learned counsel for the applicant.

16. Accordingly, the third bail application of the applicant is ***allowed***.

17. Let the applicant Rameshwar Pandey, involved in aforesaid 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 with the following conditions which are being imposed in the interest of justice:-

(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 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.

(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

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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 permission of the Court concerned.

18. 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.

(Rajesh Singh Chauhan, J.)

Order Date :- 31.3.2022

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