

Kapil vs State Of U.P. on 1 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44905

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8086 of 2025

Applicant :- Kapil

Opposite Party :- State of U.P.

Counsel for Applicant :- Shailesh Kumar Yadav, Suraj Kumar Chaudhary, Vivek Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Vivek Kumar Srivastava, learned counsel for the applicant and Sri Vijay Kumar, learned AGA-I for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 172 of 2016, under Sections 396, 307 IPC, Police Station Ganganagar, District Meerut during pendency of the trial.
4. Learned counsel for the applicant submits, however, it is a case under Section 396 IPC, in which, as per allegation, one person died and one person sustained injuries but name of the applicant was disclosed in the present matter after three months in the second statement of the injured Sanjay Sharma.

5. He further submits, injured witness Sanjay Sharma in his first statement recorded during investigation did not disclose the name of any accused and this fact cast serious doubt on his second statement recorded during investigation.
6. He further submits, even when witness Sanjay Sharma was examined by the trial court as PW-3 then he did not support the prosecution case and has been declared hostile during trial by the trial court and his statement recorded by the trial court has been annexed at page-99 of the paper-book.
7. He further submits, after the statement of witness Sanjay Sharma no evidence is left against applicant on the basis of which he can be convicted in the present matter.
8. He further submits, however, apart from the present case applicant is having criminal history of 13 other cases including a case under Section 302 IPC but his criminal history has been explained in the supplementary affidavit filed in support of instant bail application and in all the cases during investigation applicant has been made accused and in case under Section 302 IPC he has been acquitted by the trial court.
9. He further submits, in the present matter applicant is in jail since 22.10.2016 i.e. for last more than eight and half years and till date trial of the case could not be concluded.
10. He further submits, after considering the long incarceration of the applicant, a report was called from the court concerned about the current status of the trial and from its perusal, it reflects, till date out of 22 witnesses of the charge-sheet only 9 prosecution witnesses could be examined and PW-9 was examined on 18.07.2022 and since then more than two and half years have been passed but no other witness could be examined, therefore, it appears, trial of the case is moving with languid pace and there is no hope of its early disposal.
11. He further submits, from the report of the court concerned, it reflects, applicant is not responsible for delay in the trial.
12. He further submits, law is settled that even in serious cases on the basis of long incarceration, an accused can be released on bail. He placed reliance on the judgment of the Apex Court passed in the case of Tapas Kumar Palit Vs. State of Chhattisgarh 2025 SCC OnLine SC 322.
13. He further submits, therefore, considering the totality of facts and circumstances of the case, applicant should be released on bail.
14. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case of dacoity with murder in which one person lost his life and one person sustained injury but he could not dispute the arguments on facts advanced by learned counsel for the applicant including the fact that sole eye witness Sanjay Sharma during trial has been declared hostile.
15. I have heard learned counsel for the parties and perused the record of the case.

16. However, it is a case in which one person lost his life and one person sustained injuries and it reflects, after three months through the second statement of injured Sanjay Sharma name of applicant was surfaced in the present matter but this witness in his first statement recorded during investigation did not even disclose the name of applicant.

17. Further, it also reflects, apart from the statement of Sanjay Sharma there is no other cogent evidence against the applicant on record and during trial when injured Sanjay Sharma was examined by the trial court as PW-3 then he did not support the prosecution case and has been declared hostile.

18. Record also suggests that in the present matter applicant is in jail since 22.10.2016 i.e. for last more than eight and half years and till date trial of the case could not be concluded and considering the long incarceration of the applicant, a report about the current status of the trial was called from the court concerned and from its perusal it reflects till date only nine prosecution witness could be examined out of total 22 witnesses of the charge-sheet and PW-9 was examined on 18.07.2022 and since then however more than two and half years have been passed but no other prosecution witness could be further examined and considering this fact, the argument advanced by learned counsel for the applicant that trial of the case is moving with languid pace and there is no hope of its early disposal, cannot be ruled out at this stage.

19. Further, from the report of the court concerned dated 26.03.2025 it could not be reflected that applicant is causing delay in trial, therefore, considering the long incarceration of the applicant and the facts of the case, it cannot be said that fundamental right of speedy trial of the applicant has not been violated.

20. Further, applicant is however having criminal history of 13 other cases including a case under Section 302 IPC but his entire criminal history has been explained in the supplementary affidavit filed in support of instant bail application and it reflects, in all the cases during investigation applicant has been made accused and in case under Section 302 IPC applicant has already been acquitted.

21. Further, law is settled that if otherwise case of bail is made out then merely on the basis of criminal history ordinarily bail application of an accused should not be withheld.

22. Therefore, considering the facts and circumstances, particularly the long incarceration of the applicant of more than eight and half years, in my view, applicant is entitled to be released on bail.

23. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

24. Let the applicant - Kapil be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

25. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

26. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 1.4.2025 AK Pandey