

Anil Alias Pintu vs State Of Up on 28 February, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:28113

Court No. - 84

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32993 of 2024

Applicant :- Anil Alias Pintu

Opposite Party :- State of U.P.

Counsel for Applicant :- Mayank Yadav,Vivek Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Vivek Kumar Singh, learned counsel for the applicant, Sri Manish Kesarwani, learned A.G.A.-I for the State and perused the records.
2. This is the second application seeking release of the applicant on bail in Case Crime No. 134 of 2022, under Sections 7/27(3) Arms Act, registered at Police Station Thana Bhawan, District Shamli. The first bail application of the applicant bearing Criminal Misc. Bail Application No.41445 of 2022 has been rejected by this court by means of an order dated 14.05.2024.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged by the Inspector Incharge of Police Station on 05.04.2022 against the applicant, one Anil Banji and two unknown persons stating that on the basis of an information received from a mukhbir, a car was intercepted. The other person sitting in the car escaped. The applicant was apprehended from the driving seat of the car. One AK-47 rifle, 1300 live cartridges and 5 magazines were recovered from the boot of the car. 115 live cartridges were recovered from an almirah in a room in the house of the applicant, on the applicant's pointing out. The recovery memo bears the signatures of the applicant and his wife.

4. In the affidavit filed in support of bail application it has been stated that the applicant is innocent and he has been falsely implicated in the present case. The applicant's involvement in three other cases has been disclosed, in all of which he has been granted bail. One of those cases is related to Section 3/25 Arms Act.

5. The State has filed a counter affidavit annexing therewith a copy of the recovery memo and DCRB report.

6. A rejoinder affidavit has been filed on behalf of the applicant annexing therewith a copy of the order sheet of the trial court from 24.07.2024 to 29.10.2024, which shows that the case is being repetitively adjourned and the prosecution has not produced any witness.

7. Although, the F.I.R. mentions recovery of an AK-47 rifle, the description of the weapon given in the recovery memo states that it was having a total length of 8 balisht (one balisht is equal to about eight inches) and the barrel of the gun was merely one balisht long. Despite of the aforesaid discrepancy in the description of the weapon, 1300 live cartridges and 5 magazines were recovered from the car and 115 life cartridges were recovered from an almirah in the applicant's house and this recovery has been witnessed by the applicant and the wife also.

8. The aforesaid allegations prima facie make commission of a serious offence.

9. While pressing the second bail application, the learned counsel for the applicant has submitted that the applicant is languishing in jail since 05.04.2022. His first bail application was rejected on 14.05.2024 and not even a single prosecution witness has been examined since then. He has placed reliance upon the judgments of the Hon'ble Supreme Court in the cases of Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of U.P.: (2024) 8 SCC 293 & Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another: (2024) 9 SCC 813.

10. In Sheikh Javed Iqbal v. State of U.P. (Supra), the appellant was charged under Section 489-B IPC and under Section 16 of the UAP Act which carries a maximum sentence of life imprisonment. The trial is proceeding very slowly and only two witnesses had been examined. The Hon'ble Supreme Court held that:

"24. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude.

* * *

42. This Court has, time and again, emphasised that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted."

11. In Javed Gulam Nabi Shaikh v. State of Maharashtra (Supra), the Hon'ble Supreme Court became inclined to exercise its discretion in favour of the appellant keeping in mind the following aspects:

"(i) The appellant is in jail as an undertrial prisoner past four years;

(ii) Till this date, the trial court has not been able to even proceed to frame charge; and

(iii) As pointed out by the counsel appearing for the State as well as NIA, the prosecution intends to examine not less than eighty witnesses."

12. It was in the aforesaid peculiar factual background of the case, that the Hon'ble Supreme Court held in Javed Gulam Nabi Shaikh (Supra) that: -

"17. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

13. However, in X v. State of Rajasthan: 2024 SCC OnLine SC 3539, the Hon'ble Supreme Court held that: -

"14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

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16. ...It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed."

14. It is settled law that a precedent has to be understood and applied in light of the peculiar facts of that case.

15. In *Parasa Raja Manikyala Rao v. State of A.P.*: (2003) 12 SCC 306: the Hon'ble Supreme Court held that: -

"9. Each case, more particularly a criminal case, depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such cases, one should Page 4 of 5 avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive..."

16. Having considered the aforesaid facts and circumstances of the case and keeping in view the nature of allegations and recovery of an AK 47 rifle, 1300 and 5 magazines made from the applicant's car and his house, this court is of the considered view that the aforesaid facts do not warrant exercise of discretion of this court by ordering release of the applicant on bail.

17. Accordingly, this bail application stands rejected.

18. However, as the applicant is languishing in jail since 05.04.2022, and expeditious trial is a fundamental right of the applicant, it is directed that the trial court shall proceed with the trial expeditiously, by fixing dates at short intervals and by not granting any unnecessary adjournments to any of the parties and to conclude the same as soon as possible.

(Subhash Vidyarthi, J.) Order Date: 28.02.2025 Ram.