

Sanjay Kumar vs State Of U.P. Thru. Secy. Deptt. Of Home ... on 7 May, 2024

Author: Rajesh Singh Chauhan

Bench: Rajesh Singh Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2024:AHC-LK0:35412

Court No. - 11

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4926 of 2024

Applicant :- Sanjay Kumar

Opposite Party :- State Of U.P. Thru. Secy. Deptt. Of Home Lko.

Counsel for Applicant :- Ravindra Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Ravindra Shukla, learned counsel for the applicant and Sri Vishwanath Nishad, learned Additional Government Advocate for the State as well as perused the material available on record.
2. As per learned counsel for the applicant, the present applicant is in jail since 06.05.2021 in Case Crime No.125 of 2021, under Sections 498-A/304-B/316 IPC and Section 3/4 of D.P. Act, Police Station Chanda, District Sultanpur.
3. At the very outset, learned counsel for the applicant has stated that this is third bail application of the applicant, therefore, he shall not address on those grounds which have already been addressed

at the time of disposal of first and second bail application. He shall only address those grounds which may be considered sufficient and fresh grounds to consider the third bail application.

4. The first bail application of the applicant has been rejected by this Court vide order dated 15.11.2022 passed in Crl. Misc. Bail Application No. 13028 of 2022 which reads as under:

"1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. The present bail application under Section 439 Cr.P.C. has been filed by the applicant seeking bail in FIR No.125 of 2021 under Sections 498A,304B, 316 IPC, 3/4 Dowry Prohibition Act, Police Station Chanda, Sultanpur.

3. As per the FIR the accused-applicant is husband of the deceased. The marriage took place in the year 2020. Allegation is that the accused-applicant and his family members who are co-accused would torture, harass and subject the deceased to cruelty. On 1.05.2021 all the accused assaulted the victim as a result thereof, she died.

4. Post mortem examination would suggest following antemortem injuries:-

"(i) Lacerated wound 1 cm x .5 cm x skin deep present on forehead 1 cm above right eye brow;

(ii) Contusion 2 cm x 1.5 cm blue present on left Zygoma;

(iii) Abrasion (Multiple) 2 cm x 6 cm present on dorsal aspect of left forearm;

(iv) Lacerated wound 2 cm x 2 cm x bone deep present on frontal area of skull 3 cm above anterior line tissue, just lateral to midline of skull."

5. Cause of death has been opined to be shock and hemorrhage because of ante mortem injuries. The deceased was in the company of the accused-applicant when she was allegedly killed.

6. Considering the facts and circumstances of the case, gravity of the accusations, involvement of the accused-applicant in the commission of the offence, this Court does not consider it to be a fit case for enlarging the accused-applicant on bail at this stage. This bail application is thus, rejected. However, trial court is directed to proceed with the trial and conclude the same as early as possible."

5. The second bail application of the applicant has been rejected by this Court vide order dated 27.04.2023 passed in Crl. Misc. Bail Application No. 5654 of 2023 which reads as under:

"1. Heard learned counsel appearing for the accused-applicant and Sri Ashwini Kumar Singh, learned A.G.A. for the State.

2. This is second bail application which has been filed seeking bail in FIR No. 125 of 2021 under Sections 498A,304B, 316 IPC, 3/4 Dowry Prohibition Act, Police Station Chanda, Sultanpur.

3. First bail application has been rejected by this Court vide order dated 15.11.2022 passed in Bail No.13028 of 2022 by following order:-

"1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. The present bail application under Section 439 Cr.P.C. has been filed by the applicant seeking bail in FIR No.125 of 2021 under Sections 498A,304B, 316 IPC, 3/4 Dowry Prohibition Act, Police Station Chanda, Sultanpur.

3. As per the FIR the accused-applicant is husband of the deceased. The marriage took place in the year 2020. Allegation is that the accused-applicant and his family members who are co-accused would torture, harass and subject the deceased to cruelty. On 1.05.2021 all the accused assaulted the victim as a result thereof, she died.

4. Post mortem examination would suggest following antemortem injuries:-

"(i) Lacerated wound 1 cm x .5 cm x skin deep present on forehead 1 cm above right eye brow;

(ii) Contusion 2 cm x 1.5 cm blue present on left Zygoma;

(iii) Abrasion (Multiple) 2 cm x 6 cm present on dorsal aspect of left forearm;

(iv) Lacerated wound 2 cm x 2 cm x bone deep present on frontal area of skull 3 cm above anterior line tissue, just lateral to midline of skull."

5. Cause of death has been opined to be shock and hemorrhage because of ante mortem injuries. The deceased was in the company of the accused-applicant when she was allegedly killed.

6. Considering the facts and circumstances of the case, gravity of the accusations, involvement of the accused-applicant in the commission of the offence, this Court does not consider it to be a fit case for enlarging the accused-applicant on bail at this stage. This bail application is thus, rejected. However, trial court is directed to proceed with the trial and conclude the same as early as possible."

4. I do not find any change circumstance to enlarge the accused-applicant on bail at this stage. This bail application is rejected. However, learned trial court is directed to expedite the trial and conclude the same preferably within a period of one year."

6. While disposing of the first bail application on 15.11.2022, this Court directed the trial court to proceed with the trial and conclude the same as early as possible, but the trial could not be concluded, therefore, the present applicant has filed the second bail application which was also decided vide order dated 27.04.2023 whereby this Court, while rejecting the second bail application, directed the learned trial court to expedite the trial and conclude the same preferably within a period of one year.

7. Learned counsel for the applicant has further stated that more than one year period has been passed but till date single prosecution witness has not been examined, whereas there are total 17 prosecution witnesses. Attention has been drawn towards the ordersheet of the learned trial court started from 19.08.2021 till 16.03.2024, which has been enclosed as Annexure No. 8 to the bail application. Learned counsel has drawn attention of this Court towards the order dated 31.01.2024 of the learned trial court wherein this fact has been indicated that the High Court has directed to expedite the trial. Learned counsel has further submitted that for recording the statement of PW-1/complainant/informant, the trial court summoned him on 28.03.2022. Thereafter, so many dates have been fixed to record the statement of the informant/complainant but he did not appear. On 01.09.2022, Bailable Warrant has been issued against such witness and till date Bailable Warrant of Rs.5000/- is in operation against such prosecution witness but he did not appear. In some of the dates, on account of boycott of judicial work by the Advocates, the trial proceeding could not be proceeded.

8. Learned counsel for the applicant has stated that while rejecting the first bail application of the applicant, the learned trial court was directed to expedite the trial and while rejecting the second bail application, this Court directed the trial court to expedite the trial within a period of one year, the learned trial court itself can take all possible coercive steps which are permissible under the law to ensure the presence of the prosecution witnesses, inasmuch as there are ample and proper mechanism under the Code of Criminal Procedure to ensure the presence of the prosecution witnesses. The learned trial court must invoke the provision of Section 309 of Cr.P.C. to expedite the trial by fixing short dates or to fix dates on day-to-day basis. The summon was issued to the prosecution witness on 28.03.2022, thereafter the Bailable Warrant has been issued on 13.09.2022 but till date no further coercive steps have been taken against the prosecution witness concerned. He has further submitted that looking into the pace of the trial, the sufficient time may likely to be consumed to examine all 17 prosecution witnesses. Therefore, considering the period of incarceration of the present applicant in jail i.e. more than 3 years and the fact that despite the specific direction being issued by this Court to expedite the trial within a period of one year but no prosecution witness has been examined till date, the present applicant may be enlarged on bail.

9. Learned A.G.A. has opposed the prayer for bail and has submitted that the present applicant has been assigned the role of having iron rod to assault the victim. The statements of the fact witnesses, which have been enclosed with the bail application, clearly reveal that the specific role of assault through iron rod has been attributed to the present applicant, therefore, the preset bail application may be rejected.

10. However, on being confronted on the point that since no fact witness has been examined and there is no likelihood to conclude the trial in near future, therefore, as to why the total period of incarceration of the present applicant in jail may not be considered, learned AGA has submitted that this is discretion of this Court to pass any appropriate order protecting the interest of the prosecution.

11. Learned counsel for the applicant has submitted that since there is no possibility to conclude the trial in near future, therefore, in view of the dictum of Hon'ble Apex Court in re: Union of India vs. K.A. Najeeb AIR 2021 Supreme Court 712 and Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation reported in 2021 SCC OnLine SC 3606 granting bail to those accused persons on the ground that there is no possibility to conclude the trial in near future and there is a long incarceration of that accused, therefore, they were entitled for bail. Para 15 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."

12. The Apex Court in the case of Paras Ram Vishnoi (supra) in para 4 has observed as under:

"4. 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."

13. Therefore, without entering into merits of the issue, considering the fact that the present applicant is in jail for about 3 years; while rejecting the first bail application, this Court directed the learned trial court to expedite the trial; while rejecting the second bail, this Court directed the learned trial court to expedite the trial within one year, but till date no prosecution witness has been examined; therefore, it may be considered as a new ground to consider this third bail application; besides, there is no likelihood to conclude the trial shortly inasmuch as there are total 17 prosecution witnesses and till date single prosecution witnesses has not been examined, so considering the aforesaid dictums of Apex Court, I am of the opinion that the present applicant may be released on

bail.

14. Thus, this third bail application is allowed.

15. Let the applicant-Sanjay Kumar be released on bail in the aforesaid case crime number 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:-

(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.

[Rajesh Singh Chauhan,J.] Order Date :- 7.5.2024 kkv/