

# Om Shiv vs State Of U.P. on 20 December, 2022

**Author: Manish Mathur**

**Bench: Manish Mathur**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 71

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43488 of 2021

Applicant :- Om Shiv

Opposite Party :- State of U.P.

Counsel for Applicant :- Dharmendra Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Manish Mathur,J.

1. Supplementary affidavit filed today in Court on behalf of applicant is taken on record.

1A. Heard learned counsel for applicant, learned Additional Government Advocate appearing on behalf of State and perused the record.

2.This second bail application has been filed with regard to Session Trial No. 85 of 2014 arising out of Case Crime No.300 of 2013, under Sections 498A, 304-B IPC and Section 3/4 Dowry Prohibition Act, registered at Police Station Aliganj, District Etah, first bail application having been rejected vide order dated 01.07.2019 by Hon'ble Justice Sudhir Agarwal. Since his Lordship has demitted office therefore this bail application has been listed before this Court as per roster.

3. Applicant is husband and as per contents of FIR had married the daughter of first informant 14 months' prior to the date of incident. It is alleged that ever since marriage, continuous demand for dowry was being made and upon its unfulfillment, applicant murdered his first informant daughter on 12.10.2013 by burning her to death.

4. Learned counsel for applicant submits that the applicant has been falsely implicated in the charges levelled against him only on account of the fact that he is husband of deceased. Presumption against the applicant is sought to be discharged on the ground that it was in fact the deceased was insisting upon her father to provide some money to help the applicant in his business and upon its unfulfillment, committed suicide due to embarrassment. It is submitted that while rejecting the first bail application, only the FIR version and statements of first informant recorded under sections 161 and 164 Cr.P.C. have been adverted to but subsequently during the course of trial, the first informant as P.W.1 has not supported the prosecution version, as per certified copies of deposition brought on record by means of supplementary affidavit. It is submitted that applicant has spent about nine years' under incarceration as an under trial since 27.11.2013 and as yet only four prosecution witnesses have been examined out of a total of 18 prosecution witnesses.

5. Learned Additional Government Advocate appearing on behalf of State has opposed the bail application but does not dispute the fact situation.

6. Hon'ble the Supreme Court in Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another reported in (2004) 7 SCC 528 while holding that a Court granting bail should exercise its discretion in a judicious manner and not as a matter of course and that a detailed examination of evidence and elaborate documentation of merit need not be undertaken although there is need to indicate reasons for prima facie concluding why bail was being granted. It has further been held that at the time of consideration of second or subsequent bail application, there is onus on the Court to consider the grounds on which earlier bail application had been rejected and it is only after such consideration if the court is of the opinion that bail has to be granted then specific reason should be indicated why the subsequent bail application is being granted in spite of earlier rejection. The relevant paragraph is as follows:

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a Judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singht and Puran v. Rambilas.)

12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted. (See Ram Govind Upadhyay)."

7. In *Union of India v. K. A. Najeeb* reported in (2021) 3 Supreme Court Cases 713 Hon'ble the Supreme Court has considered the aspect of liberty guaranteed by Part III of the Constitution and elucidates that it could cover within its protected ambit not only due procedure and fairness but also access to justice and speedy trial. It has been held that ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. It has also been held that once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for significant period of time, the courts would ordinarily be obligated to enlarge them on bail. The relevant portion of judgment is as follows:-

"15. 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* (1994) 6 SCC 731, it was held that under trials 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, the 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, the Courts would ordinarily be obligated to enlarge them on bail."

"17. It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of the UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, the Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

"18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the Respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the Respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the Appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the Respondent's rights guaranteed under Part III of our Constitution have been well protected."

8. Hon'ble the Supreme Court in *Sanjay Chandra v. Central Bureau of Investigation*, reported in (2012) 1 SCC 40 has specifically held that bail is to be a norm and an under-trial is not required to be in jail for ever pending trial. Relevant paragraphs of the judgment are as under :-

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty."

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution."

9. Considering submissions advanced by learned counsel for parties and upon perusal of material available on record, it appears that while rejecting the first bail application, this Court has taken into account only the contents of FIR as well as statements of informant recorded under sections 161 and 164 Cr.P.C. Subsequently the first informant has deposed as P.W.1 and as per certified copies of deposition, has not supported the case pertaining to dowry demand being made at the instance of applicant and has in fact adverted to the fact that his daughter i.e the deceased used to demand money. The applicant has been under incarceration as an under trial since 27.11.2013 and as per certified copy of order-sheet evidence of only P.W.4 has been completed out of a total of 18 prosecution witnesses. As such there is no hope of early conclusion of trial.

10. Looking to the nature of allegations levelled against the applicant and submission made in the bail application, without expressing any opinion on the merits of case and considering the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, particularly since no reasonable apprehension of tampering with the witnesses has been alleged, *prima facie*, this Court finds, the applicant is entitled to be released on bail in this case.

11. Accordingly bail application is allowed.

12. Let applicant, Om Shiv, involved in the 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 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.

Trial court is directed to expedite the final hearing of trial without granting undue adjournments.

Order Date :- 20.12.2022 Subodh/-