

Jaichand Pandey vs State Of U.P. Thru. Prin. Secy. Home ... on 21 November, 2024

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2024:AHC-LK0:77010

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9515 of 2024

Applicant :- Jaichand Pandey

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Secy. Lko. (U. P.)

Counsel for Applicant :- Sarvesh Kumar Tiwari, Amrita Pandey, Shailaja Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh, J.

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

The second bail application has been filed on behalf of the applicant with the prayer to release him on bail during the trial in Case Crime No. 208 of 2021, under section 364-A IPC, P.S.- Wazirganj District- Gonda.

As per the prosecution story, the main accused Shivam Rana had kidnapped the son of the informant. The first bail application bearing Criminal Misc. Bail Application No. 8173 of 2022 (Jaichand Pandey Versus State of U.P.) has been rejected vide order dated 09.01.2024, while directing the trial court to expedite the hearing of the trial and conclude the same, within a period of six months.

The contention of learned counsel for the applicant is that the applicant is innocent and has falsely been implicated in the instant matter due to ulterior motive. He submits that the applicant is not named in the first information report and he only on the basis of suspicion has been implicated. He submits that there are 31 witnesses and out those only eight witnesses have been examined and thus, the trial will take considerable period of time to be concluded. He submits that the statement

of the informant who is the father of the alledged victim has been recorded before the trial court as P.W.-1, copy of which is appended at page 61, is evident that the main accused is one Shivam Rana, who had enmity with the father of the victim and the reasons of enmity had also been assigned in the statement of the informant. He further added that the applicant is neither named in the first information report nor the victim has named him and those are against Shivam Rana. Further, the informant has stated that he did not identify the present applicant and at the time of incident, the applicant was not with the main accused namely, Shivam Rana. He added that these are the subsequent facts, which were not before the coordinate bench of this Court, when the first bail application was considered. He specifically added that there was a direction to the trial court to conclude the trial proceedings, within a period of six months, but even after passing of six months, the trial has not been concluded as yet. He next added that the applicant has three cases criminal history which has been explained.

In support of his submissions, he has placed reliance on a judgment rendered in Criminal Misc. Bail Application No. 12549 of 2023 (Pradeep Kumar Prajapati versus State of U.P.) decided on 18.07.2024 and has referred paragraph nos. 17 to 28 of the above-said judgment. Paragraph nos. 17 to 28 are as follows:-

"17. In light of the gradual developments of the abovesaid concept of punishment, the Hon'ble Supreme Court has repeatedly held that an under trial prisoner is also entitled for the rights enshrined under article 21 of Constitution of India and therefore, right to speedy trial of an under trial prisoner also comes under the ambit and scope of article 21.

18. The Hon'ble Apex Court in the case of State of Rajasthan, Jaipur vs Balchand @ Baliy, (1977 4SCC 308) has held as follows:-

"The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative."

19. The essence of the aforesaid judgment is that the basic rule of criminal justice system is bail, not jail and in other words it can be understood as the bail is a rule and jail is an exception.

20. The Hon'ble Apex Court in case of Moti Ram and Others Vs. State of Madhya Pradesh, (1978) 4 SCC 47 has observed in paragraph 14 as under:-

"14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention

frequently falls heavily on the innocent members of his family."

21. In the above-said judgment, it has been emphasized that there are far reaching consequences as a presumed innocent has to face psychological and physical deprivation of life and he does not only losses the proper opportunity of preparation of his defense, but the innocent family members faces hard. Apart from above, the preparation for defense by such accused also hampers.

22. The above-said law has been reiterated in the cases of Gudikanti Narasimhulu and others v. Public Prosecutor, High Court of Andhra Pradesh, (1978) 1 SCC 240; Akhtari BI (Smt) v. State of M.P., (2001) 4 SCC 355; Sanjay Chandra v. CBI, Criminal Appeal No.2178 of 2011 (arising out of SLP (Crl.) No.5650 of 2011) and other; Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694; Gokarakonda Naga Saibaba v. State of Maharashtra, (2018) 12 SCC 505; Arnab Manoranjan Goswami v. The State of Maharashtra & Ors., Criminal Appeal No.742 of 2020 (Arising out of SLP (Crl) No.5598 of 2020; Union of India Vs. K.A. Najeeb, 2021 3 SCC 719.

23. Hon'ble Apex Court, time and again, has spoken in so many words, where the right to life and liberty was being infringed. For example the inordinate delay in conclusion of trials of the under trial prisoners, recently, the Apex Court in case of Sheikh Javed Iqbal @ Ashfaq Anari @ Javed Ansari Vs. State of U.P, in Criminal Appeal No. 2790 of 2024 has held that constitutional Courts 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. Paragraph 32 of the abovesaid judgement is reproduced hereunder:-

"32. This Court has, time and again, emphasized 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. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by three Judge Bench is binding on a Bench of two Judges like us."

24. Most recently, the Hon'ble Apex Court in the case of Manish Sisodia vs Directorate of Enforcement in SLP (Criminal) No. 8781 of 2024 has held as follows:-

"53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be

withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial."

25. The Hon'ble Apex Court has reiterated that an under trial prisoner/accused cannot be put behind the bars for indefinite period of time, hoping for speedy completion of trial as the same would infringe the fundamental rights to liberty under article 21 of the Constitution of India.

26. The scenario of the present case is that the first information report was lodged in the month of October, 2020 and the applicant is in jail since 14.10.2020. The fact remains that there are thirty-three witnesses out of them, only eight witnesses have been produced and examined. This Court while rejecting the second and third bail applications of the applicant, directed the trial court to complete the trial proceedings, while fixing a particular period of time, even then the same has not been concluded and the trial is running in snails motion and therefore, there is no hitch to draw inference that the conclusion of trial would take more considerable period of time resulted into hampering the object of rehabilitating the applicant as the reformed member of the society coupled with the fact that the innocent family of the applicant would felt pain and agony for their no fault.

27. Repeatedly, the Apex Court has settled the law that speedy trial is the fundamental right of an under trial prisoner and he is entitled for the same and further the prolonged incarceration prior to hold the accused guilty of an offence is amount to punishment, without any trial and therefore, infringement of right to liberty provided under article 21 of the Constitution of India is impermissible.

28. So far as the case in hand is, the same is one of the glaring example, wherein, there is a remotest possibility of conclusion of trial in the near future and in this sense, it could be firmly said that the liberty of the applicant is being curtailed because of a delayed trial in the matter. "

Referring the aforesaid, he submits that there is not even the remotest possibility of trial being concluded in the near future and the bail cannot be denied, treating it as a punitive action. He also submits that the applicant is a law-abiding-citizen and he is languishing in jail since 25.06.2021 and he undertakes that in case, he is granted bail,

he will not misuse the liberty of the same and would cooperate in the trial proceedings and he will remain present on each and every day fixed by the trial court.

Per contra, learned AGA appearing for the State has opposed the submissions aforesaid and submits that after thorough investigation, it was found that the applicant was involved in committing offence and there are ample evidence against the applicant. He also added that trial is in progress and only eight witnesses have been examined and the first bail application has been rejected by this Court and as such, he is not entitled for any relief.

Having heard learned counsels for the parties and after perusal of material placed on record, it transpires that the applicant is languishing in jail since 25.06.2021; the applicant is not named in the first information report though, this fact has already been considered by the coordinate bench of this Court, but subsequently, the statement of the informant, who is the father of the victim has been recorded which is evident that the applicant was neither present on the place of occurrence nor he had any knowledge with respect to the involvement of the applicant in the incident and even the informant do not recognize/identify the applicant. This Court has further considered that even the statement of the victim also do not corroborate the story of prosecution as he has also not named the applicant. The applicant is languishing in jail since 25.06.2021 and there are 31 witnesses who are to be examined and out of those only eight witnesses have been examined as yet and there seems to be no possibility in near future that the trial will be concluded. After the statement recorded by the informant who is one of the important witness in the matter, it transpires that there is nothing against the applicant. This Court has also taken note of fact that the coordinate bench of this Court has already directed the trial court to conclude the matter, within period of six months, but the same has not been concluded as yet. The ratio of judgment in the cases of Union of India Vs. K.A. Najeeb, 2021 3 SCC 712 and Manish Sisodia vs Directorate of Enforcement in SLP (Criminal) No. 8781 of 2024, also supports the version of counsel for the applicant; coupled with the fact that the applicant has undertaken that in case, he is granted bail, he will not misuse the liberty of same and would cooperate in the trial proceedings.

Considering the submissions of learned counsels for the parties, nature of accusation and severity of punishment in case of conviction, nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformatory theory of punishment and considering larger mandate of the Article 21 of the Constitution of India and, without expressing any view on the merits of the case, I find it to be a fit case of bail.

Let the applicant- Jaichand Pandey involved in the aforementioned 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:-

- (1) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, or otherwise during the investigation or trial;
- (2) 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. He 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;
- (3) 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.; and (4) 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, the trial court shall initiate proceedings against him, in accordance with law under Section 174-A of the Indian Penal Code.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the merits of the case.

Order Date :- 21.11.2024 Mayank