

# Shivgopal @ Raja vs State Of U.P. And 3 Others on 14 May, 2024

**Author: Ajay Bhanot**

**Bench: Ajay Bhanot**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2024:AHC:87195

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10526 of 2023

Applicant :- Shivgopal @ Raja

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Manvendra Singh

Counsel for Opposite Party :- Afshan Shafaut,G.A.

Hon'ble Ajay Bhanot,J.

Matter is taken up in the revised call. Heard Shri Manvendra Singh, learned counsel for the applicant, Ms. Afshan Shafaut, learned counsel on behalf of the first informant and learned AGA for the State.

By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 557 of 2022 at Police Station Kotwali District Fatehpur under Sections 397, 365, 411, 413, 414, 459, 377, 376-DA, 34 I.P.C. and Section 5/6 POCSO Act. The applicant is in jail since 15.09.2022.

The bail application of the applicant was rejected by learned trial court on 27.01.2023.

The applicant has been identified as the principal offender who committed act of robbery and also rape with the victim. The trial is on foot. The offence is grave. There is likelihood that the applicant had committed the offence. At this stage, no case for bail is made out.

Without going into the merits of the case, the bail application is dismissed.

Considering the gravity of the offence, interest of justice will be served by directing the learned trial court to expedite the trial within a stipulated period of time.

Though no specific time frame to conclude the trial has been set out in the Cr.P.C., yet the legislative intent of Section 309 Cr.P.C. is explicit. The scheme of the provision clearly shows that the legislative intent is to conclude the trial in an expeditious time frame. In the facts of this case, the learned trial court shall make all endeavours to conclude the trial preferably within a period of one year from the date of receipt of a certified copy of this order.

The trial court has also to be conscious of the rights of the accused persons and is under obligation of law to ensure that all expeditious, necessary and coercive measures as per law are adopted to ensure the presence of witnesses. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

All witnesses and counsels are directed to cooperate with the trial proceedings.

The learned trial court shall issue summons by regular process as per Section 62 Cr.P.C. and also by registered post as provided under Section 69 Cr.P.C. to expedite the trial.

The learned trial court shall promptly take out all strict coercive measures against all the witnesses in accordance with law who fail to appear in the trial proceeding. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

The police authorities shall ensure that warrants or any coercive measures as per law taken out by the learned trial court to ensure that the attendance of the witnesses are promptly executed.

The Superintendent of Police, Fatehpur, shall file an affidavit before the trial court on the date fixed regarding status of execution of the warrants/service of summons taken out by the learned trial court.

The delay in the trials caused by the failure of the police authorities to serve summons or execute coercive measures to compel the appearance of witnesses at the trial despite a statutory mandate, is an issue of grave concern. The said issue had arisen for consideration before this Court in *Bhanwar Singh @ Karamvir Vs. State of U.P. (Criminal Misc. Bail Application No. 16871 of 2023)* & *Jitendra v. State of U.P. (Criminal Misc. Bail Application No.9126 of 2023)* and was decided by the judgements dated 24.08.2023 & 20.12.2023 respectively. This Court in *Bhanwar Singh @ Karamvir*

(supra) & Jitendra (supra) had issued certain directions to the police authorities regarding their statutory duty to promptly serve summons and execute coercive processes to compel the appearance of witnesses.

The Director General of Police, Government of U.P. as well as Principal Secretary (Home), Government of U.P. had taken out relevant orders in compliance of judgements in Bhanwar Singh @ Karamvir (supra) & Jitendra (supra) and nominated the Senior Superintendent of Police of the concerned districts as the nodal officials for implementing the said judgments.

The counsels as well as the learned trial court are directed to comply with the directions issued by this Court in Noor Alam Vs. State of U.P. rendered in Criminal Misc. Bail Application No. 53159 of 2021. In case any strike happens during the course of the trial, the learned trial court is directed to ensure full compliance of the directions issued in Noor Alam (supra) to prevent delay in the trial.

In case the police authorities are failing to comply with the directions issued by this Court in Bhanwar Singh @ Karamvir (supra) & Jitendra (supra) and do not implement the said directions of the Director General of Police, Government of U.P. & the Home Secretary, Government of U.P. in regard to service of summons and execution of coercive measures to compel the appearance of witnesses, the learned trial court shall direct the concerned Senior Superintendent of Police to file an affidavit in this regard.

The learned trial court shall be under an obligation to examine whether the judgements of this Court in Bhanwar Singh @ Karamvir (supra) & Jitendra (supra) as well as directions of Director General of Police, Government of U.P. & the Home Secretary, Government of U.P. issued in compliance thereof have been implemented or not and to take appropriate action as per law.

The learned trial court shall also take appropriate measures in law after receipt of such affidavit which may include summoning the concerned officials in person.

It is further directed that in case any accused person who has been enlarged on bail does not cooperate in the trial or adopts dilatory tactics, the learned trial court shall record a finding to this effect and cancel the bail without recourse to this Court.

The trial judge shall submit a fortnightly report on the progress of trial and the steps taken to comply with this order to the learned District Judge.

A copy of this order be communicated to the learned trial judge through the learned District Judge, Fatehpur as well as Superintendent of Police, Fatehpur by the Registrar (Compliance) by E-mail.

Order Date :- 14.5.2024 Jaswant