

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37317 of 2021

Applicant :- Akhilesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Avdhesh Narayan Tiwari, Divya Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery, J.

1. Applicant-Akhilesh, has approached this Court by way of filing the present Criminal Misc. Bail Application under Section 439 Cr.P.C. after rejection of his Bail Application vide order dated 27.07.2021, passed by Additional Sessions Judge, Court No. 1, Jalaun at Orai, in Session Trial No. 77 of 2011, Case Crime No.500A of 2010, under Sections 147, 148, 149, 307, 304 IPC, Police Station Kotwali Orai, District Jalaun.

2. It is a case where an undertrial (Applicant-Akhilesh) is confined to jail for last 11 years, 5 months and 9 days, as on 09.04.2022, that while he was in jail, in another case, though he was not named in the FIR but later on his name was added on the basis of statement of witnesses recorded during investigation, that applicant allegedly alongwith other named accused, which includes jail officers also, involved in an offence where two accused persons died within the premises of jail.

3. Despite these facts and seriousness of allegations there are few factors which are relevant for the purpose of consideration of this bail application and in this regard I have heard Sri Avdhesh Narayan Tiwari, learned counsel for applicant and Sri K.P. Pathak, learned A.G.A. for State.

4. The relevant facts are that despite various orders passed by High Court and Supreme Court to provide legal assistance to the undertrials for the purpose of filing bail application and for other remedy, however, no assistance was reached to the present applicant, who filed his first bail application in the year 2021, i.e., after about more than 10 years, which was rejected by the Trial Court.

5. Certain relevant facts and factors were not taken note by the Trial Court, which are, that out of 13 named accused, nine have already been granted bail either by Trial Court or by this Court. The latest being the case of co-accused,

Ram Narayan, who has been granted bail by this Court vide order dated 15.12.2021 passed in Criminal Misc. Bail Application No. 31687 of 2020 though some of the accused were granted bail in the year 2012 also.

6. This Court has called a report from the Jailer concerned, whether any endeavour was taken to convey the applicant about his rights and the schemes and directions passed by this Court and Apex Court in this regard. However, the report submitted by Jail Superintendent dated 09.04.2022 is silent in this regard, except the fact that applicant is in jail for more than 11 years.

7. There is another factor which is relevant for consideration of this bail application. It has been informed that testimony of 5-6 witnesses have already been recorded. However, it has been informed by Sri K.P. Pathak, learned A.G.A. that the proposed prosecution witnesses are total 63 including formal witnesses. Despite direction of this Court no order sheet has been filed of Trial Court. The applicant and other co-accused are facing trial since 2012 and after a decade it has not reached to its logical conclusion, despite direction of this Court to expedite the trial.

8. It is also submitted by learned counsel for applicant that applicant was convicted in a criminal case and appeal thereof is pending, however, till date application for suspension of sentence is not considered in appeal.

9. In a recent judgment passed by Supreme Court in **Saudan Singh vs. The State of U.P., Criminal Appeal No. 308 of 2022 (SLP (Crl.) No. 4633 of 2021), decided on 25th February, 2022** it has reiterated that long incarceration of undertrials is violation of their rights provided under Article 21 of the Constitution of India. The jail authorities are also duty bound to at least communicate undertrials about their legal rights and remedies, in case there is no one for their pairavi or lack of monitory support.

10. The Legal Services Authorities Act, 1987 (*hereinafter referred to as the "Act, 1987"*), provides provisions for legal assistance. The aims and objects of Act, 1987 are reproduced as under:

"An Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize

Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity."

11. Section 12 of the Act, 1987 provides criteria for giving legal services and reproduced as under:

"12. Criteria for giving legal services.—Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is—

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- (c) a woman or a child;
- (d) a person with disability as defined in clause (i) of Section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);
- (e) a person under circumstances of underserved want such as being a victim of a mass disaster, ethnic, violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956), or in a juvenile home within the meaning of clause (j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986), or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987 (14 of 1987); or
- (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court."

12. Case, such in hand, is also a glaring example where the role of Lawyers fraternity comes into light being torch bearer of the society. Young lawyers are advised to come forward and take up the cases of such persons who have not been able to come up before this Court due to lack of knowledge of legal provisions as well as due to their adverse pecuniary position. State Authorities are also directed to look into the matter and pass positive direction to Jail Authorities to not only convey undertrial prisoners or the convicted persons about their legal rights but also come forward and help the accused persons, such as the applicant in the present case. Justice delayed is justice denied as well as right to free legal aid and speedy trial are rights provided under Article 21 of

the Constitution. Over crowding in jail is also a matter of concern.

13. In view of above observations and considering that applicant is in jail for more than 11 years and six months, a case of bail is made out.

14. Let the applicant-**Akhilesh** be released on bail in the aforesaid case crime number on 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant will abide the orders of Court, will attend the Court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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., may be issued and if 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 I.P.C.

(v) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the Trial Court may proceed against him under Section 229-A IPC.

(vi) The Trial Court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

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

16. The bail application is allowed.

17. It is made clear that the observations made hereinabove are only for the purpose of adjudicating the present bail application.

Order Date :- 12.5.2022

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