

**A.F.R.**

**Court No. - 13**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 7404 of 2022

**Applicant :-** Fayanath Yadav S/O Late Devdutt Yadav (Fourth Bail)

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home, Lko.

**Counsel for Applicant :-** Ramakar Shukla, Ashish Kumar, Ravindra Gupta

**Counsel for Opposite Party :-** G.A.

**Hon'ble Shamim Ahmed, J.**

1. This case is taken up in the revised call.
2. Heard Sri Ramakar Shukla, learned counsel for the applicant as well as Sri Anirudha Singh, and Sri Shiv Ram Singh, learned A.G.A.-I for the State and perused the record.
3. The applicant, **Fayanath Yadav**, has moved this fourth bail application seeking bail in Case Crime 381/2011, under Sections 498-A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Kurebhar, District Sultanpur.
4. This fourth bail application has been placed before this regular Bench in the light of Hon'ble The Chief Justice's order dated 13.11.2018.
5. Learned counsel for the applicant has submitted that the applicant is innocent and has been falsely implicated in the present case. He further submits that the applicant has almost completed more than eleven years in incarceration, but till date the trial of this case has not been concluded.
6. Learned counsel for the applicant further submits that the F.I.R. was lodged on 23.05.2011 and the applicant is named in the F.I.R. along with other co-accused persons and during investigation the complicity of four co-accused persons was not found, as such they were exonerated by the Investigating Officer. He further submits that there is no overt act assigned to the accused applicant and the allegation that the deceased was beaten in-front of villagers and was taken around the village is not supported by any independent witness of the village. The entire prosecution story developed in the F.I.R. is false and fabricated with the intention to falsely implicate the applicant and his relatives.

7. Learned counsel for the applicant further submits that the mother of the applicant, namely, Smt. Kesh Pati was already granted bail by this Court vide order dated 13.09.2011 passed in Bail No. 6355 of 2011, but the applicant is languishing in jail since 01.06.2011 and his first bail application was rejected by Hon'ble Mr. Justice Ashok Pal Singh (now retired) vide order dated 27.05.2013 passed in Bail Application No. 5793/2012. The order dated 13.09.2011 is being reproduced as under:

*“List revised.*

*None present for the petitioner.*

*This bail application is rejected for want of prosecution.”*

8. Learned counsel for the applicant further submits that thereafter the applicant has moved second bail application, which was also rejected by Hon'ble Mr. Justice Surendra Vikram Singh Rathore (now retired) vide order dated 27.08.2015 passed in Bail Application No. 8318/2014 and while rejecting the second bail application, Hon'ble Court however directed the trial court to expedite the trial strictly adhering to the provisions of Section 309 Cr.P.C. The order dated 27.08.2015 is being reproduced as under:

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

*The applicant is involved in Case Crime No. 381 of 2011, under Sections 498-A & 304-B I.P.C. and Section 3/4 of the Dowry Prohibition Act, Police Station Kurebhar, District Sultanpur.*

*It is a case of dowry death. The applicant is the husband of the deceased. The victim died an unnatural death within a very short span of time after her marriage i.e. about one year. There is specific allegation of demand of dowry and consequential ill treatment.*

*Submission of learned counsel for the applicant is that the victim had committed suicide by pouring kerosene oil on her and the applicant made an effort for her rescue due to which he also received burn injuries. It is further submitted that in this case some other family members were also arrayed as accused persons, however, during investigation, their involvement was found to be false. Learned A.G.A. has opposed prayer for bail.*

*Perusal of the record shows that the incident had taken place in the intervening night of 22/23-5-2014 and the*

*applicant was medically examined after about eight days of the incident on 1.6.2014. During this period he remained absconding.*

*It is further submitted on behalf of the applicant that there is no dying declaration of the deceased.*

*Had there been any dying declaration, then the accused applicant would have been charge sheeted under Section 302 I.P.C.*

*Learned counsel for the applicant has informed the Court that PW-1 complainant has been examined during trial but his cross examination is not yet concluded.*

*Cross examination has to be done on behalf of the accused himself and not on behalf of the prosecution. It appears that the applicant himself is delaying the disposal of the trial.*

*Keeping in view the short period within which the victim died an unnatural death and suffered cruelty in connection with demand of dowry, no case for bail is made out. Bail application is accordingly rejected as the husband is the main accused in such nature of cases. However, the trial court is hereby directed to expedite the trial strictly adhering to the provisions of Section 309 Cr.P.C. ”*

9. Learned counsel for the applicant further submits that there was a specific direction of this Court to expedite the trial but the trial of the case was not concluded for three year. Thereafter, the applicant again moved the third bail application, which was also rejected by Hon’ble Mr. Justice Anant Kumar (now retired) vide order dated 25.07.2019 passed in Bail Application No. 3860/2018 with the direction that the trial court is directed to expedite the trial and take proper coercive steps against the witnesses to ensure that the trial will be concluded preferably within a period of six months. The order dated 25.07.2019 is being reproduced as under:

*“This is the third bail application. The first bail application being Bail No.5793 of 2012 was rejected for want of prosecution. The second bail application being Bail No.8318 of 2014 was rejected on merits. Supplementary affidavit filed today is taken on record.*

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

*The present bail application has been filed by the applicant in Case Crime No.381/2011, under Sections 498A, 304B I.P.C. & Section 3/4 D.P. Act, Police Station - Kurebhar, District – Sultanpur.*

*As an additional ground, it is stated by learned counsel for he applicant that the applicant is in jail since 2011 and the trial has not yet been concluded. It is also stated that during course of trial, statement of two witnesses has been recorded but they have not stated specifically about the demand of dowry.*

*Opposing the bail, learned A.G.A. has stated that the mother of the deceased Sumita has been examined as PW.1 before the trial court. She has clearly stated that even before the occurrence the deceased was badly beaten by the inlaws and the present applicant. She was roamed around the village. Her clothes were also torn. The death has been caused by burning. Kerosene oil was poured upon her and put her to fire.*

*All these facts have already been considered by the court while considering the second bail application. The trial is in progress. There is no good ground for granting bail.*

*Accordingly, the bail application is rejected.*

*The trial court is directed to expedite the trial and take proper coercive steps against the witnesses to ensure that the trial will be concluded preferably within a period of six months. ”*

10. Learned counsel for the applicant further submits that more than three years have been passed after the rejection of the third bail, but the trial of the present case till date has not been concluded and as per information received out of 18 prosecution witnesses only 06 prosecution witnesses have been examined till date. He further submits that there is a clear cut direction of this Court to expedite the trial of the case and the time prescribed by this Court i.e. six months have already been expired and more than 11 years have been passed from the date of detention of the applicant, but the trial of the present case has been yet been concluded and further submits that it will take much time for conclusion of trial. Therefore, in the light of the dictum of the Hon'ble Apex Court in re; **Union of India vs. K.A. Najeeb** reported in **AIR 2021 Supreme Court 712** and **Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation** passed in

**Criminal Appeal No.693 of 2021 (Arising out of SLP (CrI) No.3610 of 2020)**, wherein it has been held that if the accused person is in jail for substantially long period and there is no possibility to conclude the trial in near future, the bail application may be considered. Besides, learned counsel for the applicant has referred the dictum of the **Hon'ble Apex Court in re; Gokarakonda Naga Saibaba v. State of Maharashtra, (2018) 12 SCC 505**, wherein it has been held that if all fact / material witnesses have been examined, the bail application of the accused may be considered and they were entitled for bail. Para-16 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."*

11. The Apex Court in the case of **Paras Ram Vishnoi** (supra) has observed as under:-

*"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."*

12. Learned counsel for the applicant has also placed reliance on the latest order of the Supreme Court dated 25th February, 2022 in **Criminal Appeal No.308/2022 (Saudan Singh vs. State of UP) arising out of SLP (CrI) No.4633 of 2021**. The relevant part of the order is reproduced herein below:-

"We have put to learned AAG and the learned counsel for the High Court that a list should be prepared of all cases where the person has served out a sentence of 14 years, is

not a repeat offender, and in any case if in these cases at one go bail can be granted and cases remitted for examination under the Uttar Pradesh Prisoners Release on Probation Rules, 1938. In all these cases, there is a high possibility that if these people are released, they may not be even interested in prosecuting their appeals.

The second category of cases can be one where the person has served out more than 10 years of sentence. In these cases also at one go bail can be granted unless there are any extenuating circumstances against him.

We are quite hopeful that the High Court will adopt the aforesaid practice and thus prevent the Supreme Court to be troubled with such matters"

Similar view has also been reiterated by Hon'ble the Apex Court in **Brijesh Kumar @ Ramu v. State of U.P.**, Criminal Appeal No. 540 of 2022 in its judgment dated 01.04.2022 and in **Vipul Vs. State of U.P.**, Special Leave to Appeal (Crl) No (s). 3114 of 2022 in its judgment dated 08.04.2022 and in **Suleman Vs. State of U.P.**, Criminal Appeal No. 491/2022 in its judgment dated 09.05.2022.

13. Learned counsel for the applicant has also placed reliance of Hon'ble Apex Court judgment in the case of **Kamal Vs. State of Haryana, 2004 (13) SCC 526** and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under :-

*"2. This is a case in which the appellant has been convicted u/s 304-B of the India Penal Code and sentenced to imprisonment for 7 years. It appears that so far the appellant has undergone imprisonment for about 2 years and four months. The High Court declined to grant bail pending disposal of the appeal before it. We are of the view that the bail should have been granted by the High Court, especially having regard to the fact that the appellant has already served a substantial period of the sentence. In the circumstances, we direct that the bail be granted to the appellant on conditions as may be imposed by the District and Sessions Judge, Faridabad."*

14. Learned counsel for the applicant has also placed reliance of Hon'ble Apex Court judgment in the case of **Takht Singh Vs. State of Madhya Pradesh, 2001 (10) SCC 463**, and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under:-

*"2. The appellants have been convicted under Section 302/149, Indian Penal Code by the learned Sessions Judge and have been sentenced to imprisonment for life. Against the said conviction and sentence their appeal to the High Court is pending. Before the High Court application for suspension of sentence and bail was filed but the High Court rejected that prayer indicating therein that the applicants can renew their prayer for bail after one year. After the expiry of one year the second application was filed but the same has been rejected by the impugned order. It is submitted that the appellants are already in jail for over 3 years and 3 months. There is no possibility of early hearing of the appeal in the High Court. In the aforesaid circumstances the applicants be released on bail to the satisfaction of the learned Chief Judicial Magistrate, Sehore. The appeal is disposed of accordingly."*

Learned counsel for the applicant further submits that ratio of law applicable in aforesaid cases is also applicable in the case of the applicant, therefore, the applicant be enlarged on bail by this Court sympathetically.

15. Several other submissions regarding legality and illegality of the allegations made in the F.I.R. have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused, have also been touched upon at length. It has been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. The applicant undertakes that in case he is released on bail he will not misuse the liberty of bail and will cooperate in trial. It has also been pointed out that the applicant is not having any criminal history.

16. Sri Aniruddh Singh, learned A.G.A. opposed the prayer for bail, but does not dispute this fact that till date as per information furnished by the Investigating Officer, out of 18 prosecution witnesses only 06 prosecution witnesses have been examined, which is also mentioned in para 21 of the counter affidavit filed by the State and also does not dispute this fact that the applicant is languishing in jail since 01.06.2011 and has completed more than 11 years in incarceration.

17. After perusing the record in the light of the submissions made at the Bar and after taking an overall view of all the facts and circumstances of this case, at the very outset, this Court anguish towards the poor progress of trial, the trial must have been concluded by now and the learned trial court is having powers to take coercive method to conclude the trial and also armed with the provisions of

Section 309 Cr.P.C., therefore, this Court is unable to comprehend as to how there is no good progress in the trial, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also the absence of any convincing material to indicate the possibility of tampering with the evidence, and considering that applicant is in jail since 01.06.2011 and has completed more than 11 years in incarceration and the trial has not yet been concluded and out of 18 witnesses only 06 witnesses have been examined as per the counter affidavit filed by the State as well as considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the cases of **Saudan Singh's case (supra)** and **Suleman (supra)**, **K.A. Najeeb (supra)**, **Paras Ram Vishnoi (supra)**, **Gokarakonda Naga Saibaba (supra)**, **Kamal (supra)**, **Takht Singh (supra)** and **Dataram Singh vs. State of U.P. and another, reported in (2018) 3 SCC 22**, this Court is of the view that the applicant may be enlarged on bail.

18. The prayer for bail is granted. The application is **allowed**.

19. Let the applicant, **Fayanath Yadav**, involved in Case Crime 381/2011, under Sections 498-A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Kurebhar, District Sultanpur, be enlarged on bail on his executing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned on the following conditions :-

(i) The applicant will not make any attempt to tamper with the prosecution evidence in any manner whatsoever.

(ii) The applicant will personally appear on each and every date fixed in the court below and his personal presence shall not be exempted unless the court itself deems it fit to do so in the interest of justice.

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(v) In case, the applicant misuses the liberty of bail 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.

(vi) 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

(vii) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad or certified copy issued from the Registry of the High Court, Allahabad.

(viii) The concerned Court/ Authority/ Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

20. It may be observed that in the event of any breach of the aforesaid conditions, the court below shall be at liberty to proceed for the cancellation of applicant's bail.

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

22. Being a peculiar case, the trial court is directed to conclude the trial of this case preferably, within a period of four months from today without granting any unnecessary adjournment to either parties except there is any legal impediment or order of higher Court.

**Order Date :- 29.7.2022**

Arvind