



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc. 2nd Bail Application No. 4909/2022

Simorna W/o Jitendra Vaishnav, Aged About 26 Years, R/o
Mission Compound (Ashan Comod) Nasirabad, Presently R/o
2/426, Kuri Bhagtasni Housing Board, Jodhpur (Raj.)
(At Present Lodged In Central Jail, Jodhpur)

----Petitioner

Versus

State of Rajasthan through PP

----Respondent



For Petitioner(s) : Mr. Sudhir Sarupariya
For Respondent(s) : Mr. Mahipal Bishnoi, PP

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Order

11/05/2022

The present second bail application has been filed under Section 439 Cr.P.C. on behalf of the petitioner, who is in judicial custody in connection with F.I.R. No.126/2015, Police Station Kuri Bhagtasni, District Jodhpur registered for the offence punishable under Sections 302/120-B & 201 of the IPC and Section 4/25 of the Arms Act.

The first bail application was dismissed on 15.12.2016 by this Court.

Learned counsel for the petitioner stated that the petitioner is a lady and she is inside jail since 02.06.2015 along with her minor daughter, who was aged about three years at that time; and the trial of the case is yet pending. Counsel further submits that the trial proceedings are not being concluded on account of failure



of the witnesses in appearing before the trial court. In such circumstances, the benefit of bail may be granted to the accused-petitioner.

Learned Public Prosecutor has opposed the bail application.

Heard and considered arguments advanced by learned counsel for the petitioner and learned Public Prosecutor. Perused the material available on record.

The Hon'ble Supreme Court in the case of **Tapan Das Vs. Union of India (Special Leave to Appeal Crl. No.5617/2021, decided on 07.10.2021)** has observed as under :-

"Taking into consideration the fact that the petitioner is reported to be in custody since 16.10.2017 and has, thus, suffered incarceration for around 4 years and there is no likelihood of completion of trial in the near future, which facts are not controverted by learned Additional Solicitor General appearing for the Union of India during the course of hearing, we are inclined to grant bail to him."

The Hon'ble Supreme Court in another case of **Union of India Vs. K.A. Najeeb in Criminal Appeal No.98 of 2021 (arising out of Special Leave Petition (Crl.) No.11616 of 2019)** held as under:-

"18. It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of 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. 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 the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

19. *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."*

It is further noteworthy that the co-ordinate Bench of this Court in the case of "Sunil Vs. State" (S.B. Criminal Miscellaneous 4th Bail Application No.4024/2022) granted bail to the accused-petitioner for offence under NDPS Act on the ground that he has been suffering incarceration for more than four and a half years.

Having regard to the totality of the facts and circumstances of the case and considering the facts that the accused-petitioner is a lady and she is inside jail since 02.06.2015 along with her minor daughter aged about three years and the trial of the case is yet pending, therefore, without expressing any opinion on the merits



of the case, I deem it just and proper to grant bail to the accused petitioner under Section 439 Cr.P.C.

Accordingly, the second bail application filed under Sec.439 Cr.P.C. is allowed and it is directed that petitioner - **Simorna W/o Jitendra Vaishnav** shall be released on bail in connection with **F.I.R. No.126/2015, Police Station Kuri Bhagtasni, District Jodhpur** provided she executes a personal bond in a sum of Rs.2,00,000/- with two sureties of Rs.1,00,000/- each to the satisfaction of learned trial court for her appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

(**MANOJ KUMAR GARG**),J

50-Rashi/-

