

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19770 of 2019

Applicant :- Rakesh Mani

Opposite Party :- State of U.P.

Counsel for Applicant :- Vibhav Prakash Tripathi

Counsel for Opposite Party :- G.A., Subhash Chandra Yadav

Hon'ble Ravi Nath Tilhari, J.

Heard Shri Vibhav Prakash Tripathi, learned counsel for the applicant, learned A.G.A. for the State and perused the material on record.

This is the fourth bail application filed by the applicant Rakesh Mani involved in S.T. No. 117 of 2008 (State versus Rakesh Mani & others) arising out of Case Crime No. 1871 of 2008 under Sections 147, 148, 149, 302, 307, 504 & 505 I.P.C. and 7 of Criminal Law Amendment Act Police Station Pipiganj, District-Gorakhpur with a prayer to enlarge him on bail.

The first bail application was rejected by Hon'ble Sri Kant Tripathi, J. by order dated 28.05.2009 in Criminal Misc. Bail Application No. 10757. The second bail application was rejected for want of prosecution as being infructuous by Hon'ble Mrs. Jayashree Tiwari, J. by order dated 08.10.2012 passed in Criminal Misc Bail Application No. 21719 of 2009. The third bail application was rejected by Hon'ble Mohd. Tahir, J in Criminal Misc. Bail Application No. 16635 of 2014 passed on 26.07.2016.

Learned counsel for the applicant submits that in the Case of co-accused Yogendra Yadav, his third bail application was rejected by Hon'ble B.K. Narayana, J by order dated 02.09.2014 while observing as under:-

"However, considering the peculiar facts and circumstances of the case, this Court hopes and trusts that the trial court shall make every possible endeavour to conclude the trial expeditiously without granting unnecessary adjournments to either of the side preferably within a period of three months from the date of production of certified copy of this order, if there is no legal impediment.

With the aforesaid observations, this application is disposed of. However, in case the applicant's trial is not concluded within the time stipulated hereinabove, the applicant may renew his prayer for bail before this Court."

Learned counsel for the applicant submits that the trial of the accused is also going on along with Yogendra Yadav. Learned counsel for the applicant submits that the order dated 02.09.2014 passed in the case of Yogendra Yadav was filed before the trial court on 29.09.2014. The trial was not concluded within the stipulated period of three months. The statement of the prosecution witness P.W. 9, the Investigating Officer was recorded on 09.04.2018 and the next date 26.04.2018 was fixed. The witness did not turn up on 26.04.2018, 10.05.2018 and 24.05.2018 and the case was fixed for prosecution witnesses for more than two dozens dates thereafter. This Court issued non bailable warrants against P.W. 9 Jokhulal and Devendra Nath and also issued notices under Section 350 Cr.P.C. which continued since 01.08.2018. In the aforesaid circumstances the co-accused Yogendra Yadav filed 4th bail application and this Court after considering the ordersheet of the trial court as well as the status report of S.T. No. 117 of 2009 from the District Judge Gorakhpur, did not find any satisfactory explanation as to why despite directions of the court to conclude the trial within a period of three months the trial had not been concluded. This Court by order dated 08.03.2019 released the co-accused Yogendra Yadav on bail in S.T. No. 117/2009 arising out of Case Crime No. 1871 of 2008.

Learned counsel for the applicant further submits that the other co-accused Sanjay Mani was also granted bail by this Court in Criminal Misc. Bail Application No. 35439 of 2017 by order dated 27.09.2019, who was also similarly placed with co-accused Yogendra Yadav.

Learned counsel for the applicant submits that in the case of co-accused Yogendra Yadav, this Court gave following specific directions by order dated 08.03.2019.

"that in case the prosecution witnesses are not turning up despite issuance of non bailable warrants for the past more than 20 dates. The trial court shall make its endeavour to either get non bailable warrant and the notices executed on the witnesses who are not turning up or may close prosecution evidence and proceed to record the statement of accused and defense and

expedite the trial of aforesaid case and conclude the same in accordance with law without granting unnecessary adjournments to either of the parties as expeditiously as possible preferably within a period of four months from the date of production of certified copy of this order at any cost. "This Court also observed that "the manner in which the court below is taking the matter so lightly is highly reprehensible."

Learned counsel for the applicant submits that even after the orders dated 08.03.2019 and 27.09.2019, the trial is at the stage of evidence of P.W.-9. In paragraph 4 of the affidavit in support of the fourth bail application it has been stated as under

"From perusal of the ordersheet the several dates have been fixed but till today only 8 witnesses have been examined as P.W. 1 to P.W.-8 and against the P.W.-9 N.B.W. has been issued by the concerned trial court due to this applicant is suffering loss after lapse of 11 years but the trial of the present case is not concluded till date. The applicant is in jail since 20.10.2008. He is innocent and has been falsely implicated in this case. The applicant is entitled for grant of bail on the basis of parity as well as on the ground that the trial has not been concluded inspite of specific directions given by this Court in the case of Yogendra Yadav. There are no chances of the applicant fleeing away from the judicial process and/or tampering with the evidence. The applicant undertakes to appear personally on each and every date and shall also not seek any unnecessary adjournment during trial in case, the applicant is enlarged on bail he shall not misuse the "liberty on bail".

Learned A.G.A. though opposes the prayer for bail but could not place anything before this Court so as to bring any circumstances existing justifying denying of bail to the accused applicant when he is already in jail for a long time, since 20.10.2008.

In ***Rajesh Ranjan Yadav @ Pappu Yadav vs Cbi Through Its Director, 2007 (1) SCC 70 to Hon'ble Supreme Court*** while recognizing that personal liberty is a valuable constitutional right recognized under Article 21, observed that while considering question of bail, judicial approach balancing personal liberty as well as interest of the society and also other relevant factors must be observed. Court further held that personal liberty of an accused or convict is also a fundamental right but if the circumstances so justify, it can be eclipsed. The

length for which an accused has remained in jail before conviction, i.e., during investigation or trial, is a relevant consideration for the reason that in case ultimately the incumbent is found not guilty, i.e. having not committed any offence, it would be a travesty of justice to keep such a person in jail for years together and denial of personal liberty in such a case though may be mitigated by awarding appropriate compensation but cannot appropriately be compensated at all. Simply because Court takes a long time in trial, it will not be justified to keep a person in jail on the ground that Court or the prosecution is not efficient enough in completing trial in a reasonably short period and the incumbent must remain in jail, even though ultimately he may be found innocent. In fact, if a person is acquitted after a long and delayed trial, though incumbent was throughout in jail, even Judicial Officer would be having a feeling of contrition facing a situation where a person has served sufficiently a long term in imprisonment though, is found innocent and ultimately acquitted. No uniform principle can be laid down since every matter would depend on the circumstances of each case and it cannot be said that a person has remained in jail for long time, for that reason alone bail must be granted, but the period during which an incumbent has been remained in jail, during investigation or trial is a relevant factor.

In the case of ***Anil Kumar Yadav vesus State (NCT of Delhi) 2018 16 SCC 129 the Hon'ble Supreme Court*** again emphasized that the liberty of under trials is also a relevant consideration. But equally important is to consider the impact of their release on bail and the prosecution witnesses and also its impact on society. The prime consideration is the fair trial and ensure that justice is done. It is appropriate to reproduce Para 30 of the said judgment:-

"30. We are conscious of the fact that the appellants are only under trials and their liberty is also a relevant consideration. But equally important is to consider the impact of their release on bail on the prosecution witnesses and also its impact on society. In order to ensure that during trial the material witnesses depose without fear and justice being done to the society, a balance has to be struck.

Referring to *Masroor v. State of Uttar Pradesh* and another (2009) 14 SCC 286 and other cases, in [State of Bihar v.](#)

[Rajballav Prasad](#) alias Rajballav Prasad Yadav alias Rajballabh Yadav (2017) 2 SCC 178, this Court held as under:-

"26. We are conscious of the fact that the respondent is only an undertrial and his liberty is also a relevant consideration. However, equally important consideration is the interest of the society and fair trial of the case. Thus, undoubtedly the courts have to adopt a liberal approach while considering bail applications of the accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice-delivery system. It is this need for larger public interest to ensure that criminal justice-delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations. After all, if there is a threat to fair trial because of intimidation of witnesses, etc., that would happen because of wrongdoing of the accused himself, and the consequences thereof, he has to suffer"

Considering the totality of the case and in particular that inspite of the directions and the observations made by this Court in case of Yogendra Yadav by orders dated 02.09.2014 and 08.03.2019 directing the trial court to conclude the trial which has yet not been concluded and still pending at the stage of the evidence of P.W.-9 and considering liberty of the applicant guaranteed by Article 21 of the Constitution of India, I am inclined to release the applicant on bail, as the co-accused Yogendra Yadav and Sanjay Mani have already been released on such ground but by imposing the following conditions for the justice being done to the society by ensuring free and fair trial.

Let the applicant Rakesh Mani, 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, harass or pressurize 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.
- (v) The trial court shall make all possible efforts/endeavour to conclude the trial as per law for which directions have already been issued by this Court by orders dated 02.09.2014 and 08.03.2019 passed in the case of Yogendra Yadav.

The identity, status and residential proof of sureties will be verified by court concerned. 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.

The bail application is allowed.

Order Date :- 26.6.2020

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