

**Court No. - 66**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 16871 of 2023

**Applicant :-** Bhanwar Singh @ Karamvir

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Bratendra Singh

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

**With**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 27375 of 2023

**Applicant :-** Madan Lal Harijaan

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Satish Sharma

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

**With**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 29855 of 2021

**Applicant :-** Devendra

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Ranjeet Asthana, Mohammad Zakir

**Counsel for Opposite Party :-** G.A., Rajnikant Pandey

**With**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 29718 of 2023

**Applicant :-** Nasir Alam

**Opposite Party :-** State Of U.P. . And Another

**Counsel for Applicant :-** Sunil Kumar Srivastava

**Counsel for Opposite Party :-** Ashish Pandey, G.A.

**Hon'ble Ajay Bhanot, J.**

1. The issue that arises for consideration in all connected matters is a recurring theme in the criminal law process in the State of Uttar Pradesh and is arising regularly in bail applications before this Court. The failure of the police to

serve summons and execute coercive processes issued by the court and its consequences on the fundamental rights of liberty of an accused and fair administration of right of bail arise in these cases directly have to be addressed squarely. The status reports sent by the learned trial courts reveal that the trials are being delayed as the police authorities did not serve summons and execute coercive measures in a timely manner to compel appearance of the witnesses on the appointed date in the trial. The status reports are made part of the records.

2. Right of bail arises from Section 439 of Code of Criminal Procedure,1973<sup>1</sup>.

3. With coming of the Constitution and development of constitutional law, the statutory domain of bails transformed into constitutional jurisdiction.

4. The right to bail is derived from statute but cannot be removed from constitutional oversight.

5. Good authority has long entrenched the right of an accused to seek bail in the charter of fundamental rights assured by the Constitution of India.

6. Bail jurisprudence was firmly embedded in the constitutional regime of fundamental rights in ***Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High***

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<sup>1</sup> hereinafter referred to as the Cr.P.C.

***Court of Andhra Pradesh***<sup>2</sup>. Casting an enduring proposition of law in eloquent speech, V.R. Krishna Iyer, J. held:

“1. Bail or jail?” — at the pre-trial or post-conviction stage — belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the Bench, otherwise called judicial discretion. The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. As Chamber Judge in this summit court I have to deal with this uncanalised case-flow, ad hoc response to the docket being the flickering candle light. So it is desirable that the subject is disposed of on basic principle, not improvised brevity draped as discretion. Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law”. The last four words of Article 21 are the life of that human right.”

7. More recently the interplay of constitutional liberty assured under Article 21 and statutory right of bail of an undertrial prisoner was affirmed by the Supreme Court in **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)**<sup>3</sup>.

8. Engagement of fundamental rights in bail jurisprudence is a constant in constitutional law.

9. The Court while examining a bail application has to balance and reconcile diverse objectives, namely, the imperative of constitutional liberties of an accused, the

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2 (1978) 1 SCC 240

3 Special Leave Petition (Criminal) No. 915 of 2023

necessity of bringing an offender to fair and speedy justice, and the mandate of upholding the law.

**10.** Parameters of bail are well settled by judicial precedents and practices achieve the aforesaid aims in full measure.

**11.** Some of the settled parameters of grant of bail include nature and gravity of the offences, and the likelihood of an accused having committed the offence. The possibility of the accused reoffending, influencing witnesses and tampering with evidence or being a flight risk are also relevant factors to be considered while deciding a bail application.

**12.** Prolonged incarceration of accused persons due to delay in trials violates the fundamental liberties of the accused guaranteed under Article 21 of the Constitution of India, when the trial is inordinately delayed for no fault of the accused. Right to a speedy trial is a fundamental right flowing from Article 21 of the Constitution of India [See **Hussainara Khaton & Ors. Vs. Home Secretary, State of Bihar**<sup>4</sup>].

**13.** Right to a speedy trial is the mandate of constitutional law. Delays in trials are a reality of the justice system.

**14.** Accordingly, the courts while deciding the bail applications also examine the period of internment of an accused and the status of trial. (See **Mohd. Muslim @ Hussain (supra)**). Further, in the facts and circumstances of

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<sup>4</sup> 1980 (1) SCC 81

cases, directions are also issued to the trial courts as a matter of accepted judicial practice to expedite the trial in order to serve justice. The said criteria and manner of exercise of bail jurisdiction are consistent with constitutional values embedded in the constitutional text and those evolved by constitutional law. In the process the courts realise the fundamental rights of an accused to a speedy trial and administer fair justice in bail jurisdiction and uphold the rule of law.

**15.** Legal issues which have a direct impact on the liberty of the prisoner and administration of fair justice in bail jurisdiction often arise squarely for consideration in the facts of a bail application. Declining to decide such issues on the footing of a narrow interpretation of bail jurisdiction will amount to abdication of constitutional obligations of this Court and will result in miscarriage of justice. The narrative has the benefit of authority. This Court in **Anil Gaur @ Sonu @ Sonu Tomar Vs. State of U.P (Criminal Misc. Bail Application No. 16961 of 2022)**<sup>5</sup> fortified the constitutional jurisdiction of this Court while sitting in bail determination arising from Section 439 Cr.P.C.:

“2. While discharging judicial functions in bail determination this Court is not denuded of its status as a constitutional court. The court is under a constitutional obligation to address various legal and constitutional issues which impact the grant of bail if they arise in the facts of a case.”

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5 2022 SCC OnLine All 623

**16.** Reference can also be profitably made to **Ajeet Chaudhary Vs. State of U.P.**<sup>6</sup>; **Junaid Vs. State of U.P.**<sup>7</sup> and **Monish Vs. State of U.P.**<sup>8</sup>, in which questions of law and constitutional liberty had arisen in bail applications. The issues were duly determined which enabled the court to streamline the process of fair administration of the bail jurisdiction.

**17.** Chapter VI of the Code of Criminal Procedure, 1973 provides the procedure for compelling appearance of the accused and witnesses to participate in the trial. The provisions in Chapter VI of Cr.P.C. contemplate a graduated process of coercive measures to compel the appearance of the accused and witnesses. The process is initiated with issuance of summons which is to be followed by bailable warrants. The measures are escalated by taking out non bailable warrants. The final stages in the process are proclamation and attachment.

**18.** Summons, bailable warrants and non bailable warrants are directed to police officers. Duty is imposed by the Cr.P.C. upon police authorities to serve the summons, execute other coercive measures like bailable warrants and non-bailable warrants issued by the courts in a time bound manner.

**19.** The narrative will benefit from a brief survey of certain statutory provisions.

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6 2021 SCCOnLine All 17

7 2021 (6) ADJ 511

8 Criminal Misc. Bail Application No. 55026 of 2021

**20.** Section 61 Cr.P.C. vests the power in the courts to issue summons for appearance of witnesses:

“Section 61. Form of summons. Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.”

**21.** Section 62 Cr.P.C. casts the responsibility of service of summons upon the police officers.

“Section 62. Summons how served.

(1). Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

(2). The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(3). Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.”

**22.** Section 70 Cr.P.C. vests the power of issuance of warrants in the courts.

“Section 70. Form of warrant of arrest and duration.

(1). Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2). Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.”

**23.** The warrants are ordinarily directed to police officer under Sections 72 Cr.P.C. and 74 Cr.P.C. Warrants can also be forwarded for execution outside the local jurisdiction of the court issuing it under Section 78 Cr.P.C. Under section 78

Cr.P.C. warrants are directed to the Superintendent of Police or Commissioner of Police within whose local jurisdiction it is to be executed, or the concerned Executive Magistrate. Relevant provisions are extracted hereinunder:

“Section 72. Warrants to whom directed.

(1). A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2). When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.”

**24.** Failure of the police authorities to serve summons or execute bailable warrants or non bailable warrants is looked askance by the statute and the courts alike.

**25.** The courts are duly empowered under the Code to take out penal proceedings against defaulting police officials for failing to serve summons or execute bailable warrants or non-bailable warrants.

**26.** Failure to serve summons or execute warrants by police officers and absence of official witnesses constitute offences affecting the administration of justice.

**27.** Chapter 26 of the Cr.P.C. contains detailed provisions as to offences affecting the administration of justice.

**28.** Section 173 I.P.C. also provides for punishment for preventing service of summons or other proceedings. In this

regard Section 217 I.P.C. also provides for inflicting punishment of public servant for disobeying direction of the law with intent to save person from punishment or property from forfeiture. Some of the provisions which become applicable to government servants for preventing service of summons or neglecting to appear before the court include Sections 345 Cr.P.C., 349 Cr.P.C. and 350 Cr.P.C. The provisions are extracted in Appendix 1<sup>i</sup>.

**29.** There is another aspect to the matter. Non compliance of orders of a trial court issuing summons or taking out coercive measures directly interferes in the administration of justice and constitutes contempt of court.

**30.** However, such course of action under the statute will lead to multiplicity of litigation and consume precious judicial time. Scale of the problem is so vast that taking out criminal or contempt proceedings in every matter against erring officials would also mire the police and other State departments in excessive and avoidable litigation. Legal proceedings of this nature would drain away scarce resources of the police force from its core tasks of policing, investigations and discharging statutory duties under the Cr.P.C.

**31.** It is noteworthy that government circulars as well as General Rules (Criminal) also cover the field of service of

summons and responsibility of officials to comply with the summons and other coercive measures issued by the courts.

**32.** Circular No. 51/IV-h-36 dated 10<sup>th</sup> March, 1977 casts responsibility on the Superintendent of Police and also the Inspector General of Police, Uttar Pradesh:

“(b) Normal summons should be sent through the Superintendent of Police to the Station Officer concerned within three days. The Station Officer shall report compliance directly to the, court concerned within 15 days of the receipt of the summons in the office of the Superintendent of Police.

(c) The Inspector General of Police, Uttar Pradesh has issued separate directions in this behalf to his subordinate officers. In case, however, no report is received from the S.O. concerned within the prescribed time or report of non-compliance is received with regard to witness, the court should take up the matter with the Superintendent of Police concerned immediately.”

**33.** Circular No. 65/VIIb-9 dated 14<sup>th</sup> June, 1979, provides for securing appearance of transferred police officers or officials as witnesses. In this regard the summons have to be directed to the Superintendent of Police of the district and Deputy Inspector General of Police:

“The summonses requiring appearance of transferred police officers or officials, as witnesses should, instead of being sent to the Police Headquarters, Allahabad be sent to the Superintendent of Police of the district concerned after ascertaining their address from the Public Prosecutor. In case it is not possible to ascertain the addresses of transferred police officers or officials from the Public Prosecutor, the summonses of non-gazetted police officials should be sent to the local Superintendent of Police and that of gazetted police officers to the Assistant Inspector General of Police, U.P., Lucknow, requesting them to arrange for the service of summonses.”

**34.** Non compliance of the directions of the court is covered by Circular No. 42/98 Dated: Allahabad: 20/8/1998:

“4. If the police personnel are not complying with the directions of the court then appropriate action under the provision of the contempt of courts Act be initiated against them.”

**35.** Circular No. 76/Admin. (F); Alld. Dated: 14.12.2007 issued in pursuance of various recommendations of the High Court acknowledges the delay in service of summons as main cause in disposal of the criminal cases and sets up summons cells which is manned by police constables in every districts:

“Identifying the delay in service of Summons to be the main cause for delay in disposal of the Criminal Cases, on the recommendations of Hon’ble Court a cell with adequate number of police constables to be attached to each district court exclusively, has been constituted to attend the work of each court as per direction of the Sessions Judges/ CJMs.

I am directed to say that you shall exercise effective control over such cell and shall also submit a quarterly statement to the Hon’ble Court showing the performance for each month on the enclosed prescribed proforma.”

**36.** The existing and operative procedures and departmental accountability system to serve summons and execute coercive measures ordered by the court are largely ineffective and have failed to achieve their purpose. The police department will have to revisit extant organizational procedures, departmental oversight and determination of responsibility in respect of service of summons and execution of coercive measures issued by the courts. Necessary changes for individual accountability have to be introduced after examining the infirmities in the system apart from those found in this judgement.

**37.** In this wake, the powers of the courts to draw criminal proceedings or even contempt proceedings against the erring police officials for failing to serve summons or executing

coercive processes have to be supplemented by effective departmental procedures delineating responsibility and fixing accountability in the police. An independent and effective internal accountability system in the police force for ensuring service of summons, and execution of coercive processes in a time bound framework may well be the need of the hour. A composite scheme of departmental accountability to ensure timely service of summons and execution of warrants, coexisting with provisions in the Cr.P.C. and powers of contempt of court for penalising acts interfering in the administration of justice will facilitate speedy conclusion of trials, besides obviating possible criminal litigation against police officials.

**38.** On earlier occasions when confronted with such issues, this Court issued directions to the SSP/SP of the concerned district to ensure that both summons and the coercive measures taken out by the courts are executed in a time bound manner. Directions proved effective and the object of compelling the appearance of the accused or the witnesses at the trial in a timely manner was achieved. [**Ref: Jitendra Vs. State of U.P.**<sup>9</sup>]. The operative part of **Jitendra (supra)** is reproduced hereunder for ease of reference:

"Though the process for framing of rules for ensuring expeditious service of summons and execution of coercive processes by the Court is underway, this Court would like to make a few observations. In the experience of this Court only the nomination of a senior official not less than a rank of S.S.P. to oversee the service of summons/execution

of coercive processes would prove most efficacious in such matters. The Court on past occasions had issued directions upon the S.S.P. for ensuring that summons are duly served in time and the coercive processes by the trial courts are promptly executed. On failure to do so, the S.S.P.s were required to submit their personal affidavits disclosing the causes for such failure and fixing responsibility for the same. This procedure proved efficacious as in most of the cases the Court found that both the service of summons and execution of coercive processes were prompt and which in turn led to a timely conclusion of the trials.

Secondly, a witness tracker program containing updates on the latest appointment and address of the witness will be most helpful to gain the end to be achieved."

**39.** Appointment of nodal officers at various levels for compelling appearance of witnesses may be an effective measure to deal with the crises situation. However, the system shall be fruitful only if the nodal officers are heads of the police at the respective levels. The nodal officers should be empowered to coordinate with police forces at various levels be it District, Zone, State or inter State. It is noteworthy that various government circulars and statutory provisions discussed earlier cast responsibility on the district police chief or the zonal chiefs as case may be.

**40.** The statutory obligation imposed upon the police authorities to compel appearance of witnesses on orders of the courts have to be incorporated in the charter of duties of the nodal officers to which they shall be accountable. Performance of said officials is also liable to be evaluated on the said yardsticks and corrected by the department whenever deviations occur.

**41.** The magnitude of the problem of absent witnesses and inadequacy of the response of the police to enforce summons and coercive measures converge to expose a systemic fault line which threatens the credibility of the justice delivery system.

**42.** Inability of the police authorities to serve summons and execute coercive measures issued by the learned trial courts in the specified time frame is an endemic problem and a major bottleneck in the criminal law process. This deficiency in functioning of the police results in absence of witnesses in courts and causes interminable delays in trials and strikes at the root of public faith in the justice delivery system. The police authorities cannot turn a Nelson's eye to departmental shortcomings and senior officials cannot evade responsibility.

**43.** Rights of accused to a speedy trial under Article 21 of the Constitution of India are being violated and fair administration of right of bail is being hampered as a consequence of these failures of the police department.

**44.** True it is that judicial power is the monopoly of courts and judicial orders are the prerogative of courts. True also that realization of fundamental rights of citizens is the obligation of all organs of State and dispensation of justice to citizens is the responsibility of all instrumentalities of governance. The police cannot deny its statutory duty to

compel prompt appearance of witnesses by timely service of summons and execution of warrants on orders of the courts. The State cannot abnegate its constitutional obligation to protect the fundamental rights of prisoners who suffer prolonged incarceration due to delayed trials. Neither institution can escape accountability.

**45.** The need to address this issue squarely caused this Court to direct the State Government to consider framing of rules for an efficacious system of accountability within the police department for timely service of summons and execution of coercive processes issued by the courts. [Ref: **Jitendra (supra)**]. Since the consideration is on foot, the State Government may also examine these aspects of the matter. The task has to be accomplished with deep meticulousness and greatest promptitude.

**46.** Failure of the police authorities and neglect of the State Government to acknowledge their statutory duties and constitutional obligations respectively will lead to miscarriage of justice. Prisoners spend long years in jail simply because the police authorities do not ensure appearance of witnesses on a timely basis in defiance of orders passed by the trial courts. Failure of justice becomes more acute because many of the prisoners belong to marginalized sections of the society and are incapacitated by poverty and legal illiteracy. All stakeholders would do well

remember to caution of this Court given in **Anil Gaur (supra)**:

“59...Exactions of poverty are more severe than punishments in law. For them the glorious dawn of the 75th year of independence has lost the sheen of freedom's ideals and the substance of the republic's promise.

60. Injustice is the birthmark of a slave nation. Justice is the birthright of a free people and our constitution says they shall have it.”

**47.** A copy to be served upon the Director General of Police, Government of U.P., Director General (Prosecution), Home Secretary, Government of U.P., Legal Remembrancer/Principal Secretary (Law), Government of U.P., Lucknow and Director, JTRI, Lucknow.

## **Order in Bail Application**

**48.** By means of the second bail application the applicant has prayed to be enlarged on bail in Case Crime No.37 of 2014 (S.T. No.260 of 2014) at Police Station-Oncha, District-Mainpuri under Sections 147, 148, 149 and 302 IPC and Section 7 Criminal Law Amendment Act.

**49.** The applicant is on interim bail granted by this Court on 21.07.2023.

**50.** The following arguments made by Shri Bratendra Singh, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Paritosh Kumar Malviya,

learned AGA-I from the record, entitle the applicant for grant of bail:

**I.** The applicant is a law abiding citizen and had always cooperated with the investigations and joined the trial proceedings.

**II.** The trial is moving at a snail's pace and and shows no sign of early conclusion. The applicant cannot be faulted for the delay in the trial.

**III.** The status report sent by the learned trial court records that delay in the trial is also being occasioned by the failure of the police authorities to serve summons and execute coercive measures issued by the learned trial court.

**IV.** Inordinate delay in concluding trial had has led to virtually an indefinite imprisonment of the applicant without there being any credible evidence to implicate him in the offence and violates the rights of the applicant to speedy trial.

**V.** The applicant does not have any criminal history apart from this case.

**VI.** The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

**51.** In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

**52.** Let the applicant- **Bhanwar Singh @ Karamvir** be released on bail in the aforesaid case crime number, on the sureties already furnished while being enlarged on interim bail. The following conditions be imposed in the interest of justice:-

(a) The applicant will not tamper with the evidence or influence any witness during the trial.

(b) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

**Order Date-:** 24.08.2023

Dhananjai Sharma

## Code Of Criminal Procedure, 1973

### 345. Procedure in certain cases of contempt.

(1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860 ), is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code (45 of 1860 ), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

**349. Imprisonment or committal of person refusing to answer or produce document.** If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been, given, to him so to do, offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 345 or section 346.

### 350. Summary procedure for punishment for non- attendance by a witness in obedience to summons.

(1) If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

**Order Date:- 24.08.2023**

**Dhananjai Sharma**