



2026:AHC:19016

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 10692 of 2024

Kapil Gurjar Alias Ajay

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s) : Shantanu
Counsel for Opposite Party(s) : Anand Kumar, G.A., Renu Choukl

Court No. - 66

HON'BLE KRISHAN PAHAL, J.

1. List has been revised.
2. Heard Sri Shahrukh, learned counsel for the applicant, Ms. Nandani, Advocate holding brief of Sri Anand Kumar, learned counsel for the informant as well as Sri V.K.S. Parmar, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No.119 of 2022, under Sections 147, 148, 149, 302 I.P.C., Police Station- Simbhawali, District- Hapur, during the pendency of trial.

PROSECUTION STORY:

4. The applicant alongwith four other accused persons is stated to have fired indiscriminately at the son of the informant with the firearm weapons they were carrying and had committed his murder on 29.3.2022 at about 08:00 p.m.

ARGUMENTS ON BEHALF OF APPLICANT:

5. The applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case and he has nothing to do with the said offence. The FIR is delayed by about eight hours and there is no explanation of the said delay caused.
6. There are general and omnibus allegations against all the accused persons

including the applicant in the FIR, but subsequently during investigation the statement of informant was recorded by the Investigating Officer, whereby it was stated that applicant was the sole person who fired at the deceased person. As such, other accused persons were enlarged on bail distinguishing the role of the applicant.

7. Subsequently, the statement of very same informant was recorded in trial court as PW-1 and he has reiterated the allegations made in the FIR, whereby he had allayed general and omnibus allegations against all the accused persons.

8. During trial the informant has not distinguished the role of the applicant rather on being put to a question of distinguished role of applicant during cross-examination he has denied having made the said statement of singling out the applicant to be sole person who had fired at the deceased person.

9. The applicant is languishing in jail since 2.4.2022, as such, the period of incarceration comes out to be 03 years and 08 months.

10. The trial is moving at a snail's pace and there is no likelihood of conclusion of trial in near future as only three witnesses have been examined to date. As such, the fundamental rights of the applicant enshrined under Article 21 of the Constitution of India stand violated.

11. The criminal history of eleven cases assigned to the applicant has been explained. He is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF STATE/OPPOSITE PARTY:

12. The bail application has been opposed but the submissions raised by the learned counsel for the applicant could not be disputed.

CONCLUSION:

13. The Supreme Court in ***Prabhakar Tewari Vs. State of U.P. and another, 2020 (11) SCC 648*** has observed that pendency of several criminal cases against an accused itself cannot be a basis for refusal of bail, if otherwise his case of bail is made out.

14. Granting the bail to the accused in ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another 2024 INSC 645***, the Supreme Court has observed:

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are inclined to exercise our discretion in favour of the appellant herein keeping in mind the following aspects:

(i) The appellant is in jail as an under-trial prisoner past four years;

(ii) Till this date, the trial court has not been able to even proceed to frame charge; and

(iii) As pointed out by the counsel appearing for the State as well as NIA, the prosecution intends to examine not less than eighty witnesses.

8. Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India.

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court reported in (1978) 1 SCC 240***. We quote:

"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:

"I observe that in this case bail was refused for

the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."

15. The same principle was reiterated by the Supreme Court in *Gurbaksh Singh Sibba v. State of Punjab*, (1980) 2 SCC 565; *Hussainara Khatoon v. Home Secy., State of Bihar* (1980) 1 SCC 81; *Kadra Pahadiya & Ors. v. State of Bihar* (1981) 3 SCC 671 and *Abdul Rehman Antulay v. R.S. Nayak* (1992) 1 SCC 225; *Mohd Muslim @ Hussain v. State (NCT of Delhi)* 2023 INSC 311; *A Convict Prisoner v. State* 1993 Cri LJ 3242; *Union of India v. K.A. Najeeb* (2021) 3 SCC 713; *Indrani Pratim Mukerjea v. CBI*, 2022 SCC OnLine SC 695.

16. In the money laundering case of ***V. Senthil Balaji V. The Deputy Director, Directorate of Enforcement 2024 INSC 739***, the accused was incarcerated for more than 15 months as such the Supreme Court declared "*inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together*".

17. In ***Satender Kumar Antil v. Central Bureau of Investigation reported in (2022) 10 SCC 51***, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act.

18. The Supreme Court in its latest judgement passed in ***SLP (Crl.) Nos.10455-10456/2025 Ramnath Mishra @ Ramanath Mishra v. Central Bureau of Investigation*** reiterated that issues of personal liberty must be addressed with utmost speed by Courts. The accused had already been incarcerated for more than three and a half years, in the instant and connected matters. Releasing accused on bail due to excessive delays by the High Court in deciding his application also took into account lengthy pre-trial confinement, emphasizing speedy decision-making for matters of personal liberty.

19. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, taking into

consideration that there are general and omnibus allegations against all the accused persons and other accused persons have already been enlarged on bail, and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is ***allowed***.

20. Let the applicant- **Kapil Gurjar Alias Ajay**, who is involved in aforementioned case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with evidence during trial.

(ii) The applicant shall not pressurize/intimidate the prosecution witnesses.

(iii) The applicant shall appear before the trial court on the date fixed.

21. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

22. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Krishan Pahal,J.)

January 28, 2026

Vikas Verma