Neutral Citation No. - 2024:AHC-LKO:70324

A.F.R.

Court No. - 18

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2171 of 2024
Applicant :- Yash Pratap Singh
Opposite Party :- State Of U.P Thru. Prin. Secy. Home Deptt, Civil Secrt. Lko.
Counsel for Applicant :- Manish Kumar Tripathi,Aditya Vikram Singh
Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Manish Kumar Tripathi, the learned counsel for the applicant and Sri Anant Pratap Singh, the learned AGA for the State and perused the records.

2. This is the second application seeking release of the applicant on bail in Case Crime No. 668 of 2022, under Sections 147, 148, 307, 323, 504, 506 IPC, Police Station Vibhuti Khand, District Lucknow.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 16.10.2022 at 16:38 hrs. against three named persons, including the applicant, and an unknown person stating that all the accused persons, carrying hockey-stick, baseball-bat and iron rod, had attacked the informant's nephew, causing serious injury to him. The injured was being treated in the Intensive Care Unit of Medanta Hospital.

4. The State has filed a counter-affidavit against the first bail application No. 14054 of 2022, annexing therewith the complete medical-papers of the victim showing that initially he was taken to Ram Manohar Lohia Hospital, where he was managed conservatively and thereafter he was shifted to Medanta Hospital. He had complaints of pain and swelling over left eye, pain and swelling over left cheek and contused

lacerated wound on head occipital region. He was bleeding from left ear.

5. In the statement of the victim recorded under section 161, Cr.P.C. he categorically stated that co-accused Aryan Srivastava had started arguing with him and the applicant hit him with a baseball bat. Aryan Srivastava has been granted bail by means of an order dated 05.11.2022 passed by the Sessions Judge, Lucknow.

6. The first application No. 14054 of 2022 was rejected by means of an order dated 26.07.2023 after taking into consideration the nature of allegations, the nature of injury suffered by the victim and the recovery made from the applicant. This Court had also considered the fact that the applicant is a 19 years old student, who was preparing for competitive examination, he had appeared in NEET (UG), 2022 Examination and he had achieved good percentage. This Court had also considered the fact that the only allegation against the co-accused Aryan Srivastava was that he had started an argument with the victim, whereas there is a specific allegation against the applicant that he had assaulted the victim with a baseball-bat on his head, therefore, the applicant is not entitled to be released on bail on the ground of parity.

7. The second application has been filed on the ground that the victim has not supported the prosecution case in his statement recorded by the trial Court. A copy of the statement of the victim has been brought on record along with a supplementary affidavit dated 11.09.2024. A perusal of the statement of the victim, who has been examined as PW-2, indicates that the victim has fully supported the prosecution case in his examination-in-chief which runs into more than five pages. However, when the victim was fully supporting the prosecution case and not even two pages of examination-in-chief of the victim had been recorded, the learned public prosecutor made a request for declaring the witness to be hostile and strangely, the trial Court accepted this request. Even after accepting the request for declaring the victim to be hostile, his examination-in-chief continued to be

recorded and he kept on fully supporting the prosecution case in his examination-in-chief recorded on 15.05.2024. Thereafter PW-2 was cross-examined by the counsel for co-accused Nishant which remained inconclusive and it was resumed after 15 days on 30.05.2024 and in that part of the cross-examination, no major discrepancy came to light in the statement of the victim.

8. Further cross-examination of the victim was conducted on 11.06.2024, i.e. after 11 days and PW-2 was cross-examined by the counsel for the applicant on 12.06.2024. During this cross-examination, the victim changed his stand and stated that although the applicant was present at the place of incident, he had not assaulted him. Further cross-examination of the victim was recorded on 08.07.2024, i.e. after 25 days, when he was cross-examined by the counsel for co-accused Anshuman Mishra and then it was resumed on 31.07.2024, i.e. after 23 days.

9. The learned counsel for the applicant stated that as the victim has turned hostile, the applicant is entitled to be released on bail. He has further submitted that all the other co-accused persons have already been granted bail.

10. Per contra, the learned AGA has vehemently opposed the bail application and he has submitted that the co-accused persons have been granted bail prior to rejection of the first bail application of the applicant and this fact was considered by this Court while rejecting the first bail application of the applicant and this Court was of the view that the role assigned to the applicant was not at par with the role assigned to the other co-accused persons and, therefore, the applicant is not entitled to be granted bail on the ground of parity and I find force in this submission.

11. So far as the ground of the victim turned hostile is concerned, the learned AGA has submitted that a bare perusal of the statement of the victim recorded by the trial Court indicates that the victim was fully supporting the prosecution case in his statement recorded on

15.05.2024 yet the Public Prosecutor was in an apparent haste to support the accused persons and, therefore, he made a request to the Court whilst the victim was supporting the prosecution case to declare him hostile and strangely this request of the public prosecutor was accepted by the trial Court. It indicates that the prosecution is being influenced by the accused persons even when the applicant is in custody and in case the applicant is released on bail, the probability of prosecution witnesses and conduct of trial being influenced by the accused persons will increase many folds.

12. In the present case, the trial Court has conducted examination of the victim on 6 dates ranging between a period of 2½ months, whereas examination of a witness is to be recorded on a day-to-day basis.

13. Section 309 Cr.P.C. provides as follows:—

> "***309. Power to postpone or adjourn proceedings***.—
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> *(1)* ***In every inquiry or trial the proceedings shall be continued from day-to- day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded****: Provided that when the inquiry or trial relates to an offence under Section 376, Section 376-A, Section 376-AB, Section 376- B, Section 376-C, Section 376-D, Section 376-DA or Section 376-DB of the Indian Penal Code (45 of 1860), the inquiry or trial shall be completed within a period of two months from the date of filing of the charge sheet.*
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> (2) *If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:*
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> *Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:*
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> *Provided further that* ***when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing****:*

> *Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him:*
>
> *Provided also that—*
>
> (a) *no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;*
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> (b) *the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;*
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> (c) ***where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be***.
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> *Explanation 1.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.*
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> *Explanation 2.—The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.*
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> (Emphasis added)

14. In **Raj Deo Sharma (II) v. State of Bihar**: (1999) 7 SCC 604, the Hon'ble Supreme Court stated that "*We cannot permit the trial Court to flout the said mandate of Parliament unless the Court has very cogent and strong reasons.* ***No Court has permission to adjourn examination of witnesses who are in attendance beyond the next working day***" (emphasis added).

15. In **State of U.P. v. Shambhu Nath Singh**: (2001) 4 SCC 667, the Hon'ble Supreme Court explained the legislative mandate contained in Section 309 Cr.P.C. in the following words:—

> ***"11.*** *The first sub-section mandates on the trial Courts that the proceedings shall be held expeditiously but the words "as expeditiously as possible" have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the next limb of the sub-section sounded for a more vigorous stance to be adopted by the Court at a further advanced stage of the trial. That stage is when examination of the witnesses begins. The*

legislature which diluted the vigour of the mandate contained in the initial limb of the sub-section by using the words "as expeditiously as possible" has chosen to make the requirement for the next stage (when examination of the witnesses has started) to be quite stern. Once the case reaches that stage the statutory command is that such examination "shall be continued from day to day until all the witnesses in attendance have been examined". The solitary exception to the said stringent rule is, if the Court finds that adjournment "beyond the following day to be necessary" the same can be granted for which a condition is imposed on the Court that reasons for the same should be recorded. Even this dilution has been taken away when witnesses are in attendance before the Court. In such situation the Court is not given any power to adjourn the case except in the extreme contingency for which the second proviso to sub-section (2) has imposed another condition,

"provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing".

(emphasis in original)

12. *Thus, the legal position is that once examination of witnesses started, the Court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The Court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in Court, as the requirement then is that the Court has to examine them. Only if there are "special reasons", which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the Court to adjourn the case without examination of witnesses who are present in Court.*

13. *Now, we are distressed to note that it is almost a common practice and regular occurrence that trial Courts flout the said command with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a "special reason" for bypassing the mandate of Section 309 of the Code.*"

16. This High Court issued a Circular Letter No. 20/Admin. 'G-II' Dated 14.05.2015, which provides as follows:—

1. C.L. No. 152/VIII-b13, 28.10.1974	*In continuation of marginally quoted Court's earlier Circular Letters and in the light of*

2. C.L. No. 58-50/Admn „G“, 23.11.1992 *3. C.L. No. 54/VIIb-18, 06.12.2000* *4. C.L. No. 8/VIIb-18, 07.02.2000* *5. C.L. No. C-72/1990, 26.07.1990*	*Hon'ble Apex Court's orders passed in the cases of Akil alias Javed VS. State of NCT of Delhi, reported in 2012 (11) SCALE 709, in paras 27 to 36: State of UP Vs. Shambhu Nath Singh and others, reported in 2001 (4) SCC 667; Raj Deo Sharma Vs. State of Bihar, 1999 Cr.L.J. 4541 and Lt. Col. SJ. Chaudhari Vs. State (Delhi) Administration, (1984) 1 SCC 722, I am directed to state that the High Court is noticing disturbing trend in criminal trials, where Sessions cases are being adjourned, in some cases to suit convenience of counsels or because the prosecution or the defence is not fully ready and considers it necessary to draw the attention of all the Sessions Judges and Additional Sessions Judges once again to the provision of Section 309 of the Code of Criminal Procedure, 1973 and directs 73 them to adhere strictly to these provisions and instructions given below while granting adjournment in Sessions Cases:*

(1) Trial Judges are reminded of the need to comply with Section 309 of the Code in letter and spirit.

(2) In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded: (Section 309 (1) Cr.P.C.]

* * *"

17. In **Doongar Singh v. State of Rajasthan**: (2018) 13 SCC 741, the Hon'ble Supreme Court reiterated that: -

> ***"8.*** *In spite of repeated directions of this Court, the situation appears to have remained unremedied. We hope that the Presiding Officers of the trial Courts conducting criminal trials will be mindful of not giving such adjournments after commencement of the evidence in serious criminal cases. We are also of the view that it is necessary in the interest of justice that the eyewitnesses are examined by the prosecution at the earliest.*
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> * * *
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> ***10.*** *To conclude:*
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> ***10.1.*** *The trial Courts must carry out the mandate of Section 309 CrPC as reiterated in judgments of this Court, inter alia, in State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667, Mohd.*

> *Khalid v. State of W.B.: (2002) 7 SCC 334 and Vinod Kumar v. State of Punjab, (2015) 3 SCC 220.*
>
> ***10.2.*** *The eyewitnesses must be examined by the prosecution as soon as possible.*
>
> ***10.3.*** *Statements of eyewitnesses should invariably be recorded under Section 164 CrPC as per procedure prescribed thereunder."*

18. In **Ramesh v. State of Haryana**: (2017) 1 SCC 529, the Hon'ble Supreme Court expressed its concern about the culture of witnesses turning hostile, in the following words: -

> ***"39.*** *We find that it is becoming a common phenomenon, almost a regular feature, that in criminal cases witnesses turn hostile. There could be various reasons for this behaviour or attitude of the witnesses. It is possible that when the statements of such witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 by the police during investigation, the investigating officer forced them to make such statements and, therefore, they resiled therefrom while deposing in the Court and justifiably so. However, this is no longer the reason in most of the cases. This trend of witnesses turning hostile is due to various other factors. It may be fear of deposing against the accused/delinquent or political pressure or pressure of other family members or other such sociological factors. It is also possible that witnesses are corrupted with monetary considerations.*
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> ***44.*** *On the analysis of various cases, the following reasons can be discerned which make witnesses retracting their statements before the Court and turning hostile:*
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> *(i) Threat/Intimidation.*
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> *(ii) Inducement by various means.*
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> *(iii) Use of muscle and money power by the accused.*
>
> *(iv) Use of stock witnesses.*
>
> *(v) Protracted trials.*
>
> *(vi) Hassles faced by the witnesses during investigation and trial.*
>
> *(vii) Non-existence of any clear-cut legislation to check hostility of witness.*
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> ***45.*** *Threat and intimidation has been one of the major causes for the hostility of witnesses. Bentham said:"witnesses are the eyes and ears of justice". 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 for this reason there has been a lot of discussion on witness protection and from various quarters demand is made for the State to play a definite role in coming out with witness protection programme, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. A stern and emphatic message to this effect was given in Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374 as well."*

19. In **Jaikun Nisha v. State of U.P.**, 2024 SCC OnLine All 5337, this Court has taken into consideration that aforesaid provisions of law and has held that the long period consumed by the trial Court in recording the statement of a witness, during which period the witness sided with the accused, is very disturbing. Cross- examination of prosecution witnesses needs to be recorded on a day-to- day basis to avoid the possibility of witnesses being influenced.

20. What prima facie appears from the material available before the Court at this stage is that three named accused persons, including the applicant and one unknown person, carrying hockey stick, baseball bat and iron rods had attacked the victim causing serious injuries to him and he had to remain admitted to Intensive Care Unit of Medanta Hospital. The victim was fully supporting the prosecution case in his statement recorded on 15.05.2024 yet the public prosecutor made a request for declaring the victim to be hostile, which request was strangely accepted by the trial Court.

21. Although Section 309 Cr.P.C. provides that proceedings should continue from day-to-day until all witnesses have been examined yet the statement of the victim has been recorded on 15.05.2024, 11.06.2024, 12.06.2024, 08.07.2024 and 31.07.2024. Apparently, the victim has supported the prosecution case in his statement recorded on

all the dates, except in the cross examination conducted by the Counsel for the applicant on 12.06.2024.

22. The long time consumed by the trial Court in recording statement of the victim and adjournment the case on numerous occasions for long durations has given the accused persons an opportunity to influence the victim.

23. When the victim was fully supporting the prosecution case, neither there was any occasion for the public prosecutor to make a request for declaring him to be hostile nor was there any occasion for the trial Court to declare him to be hostile. It prima facie shows that the public prosecutor has acted under influence of the accused persons so as to give undue advantage to them.

24. The approach adopted by the trial Court in accepting the request of the public prosecutor to declare the victim to be hostile, even when he was fully supporting the prosecution case, speaks volume about the conduct of the presiding officer of the Court.

25. When the victim is being influenced at the behest of the accused persons even while the applicant is in custody, the possibility of the witnesses being influenced in case of release of the applicant on bail is very grave. In these circumstances, this Court finds no good ground to enlarge the applicant on bail.

26. The second bail application of the applicant is accordingly **rejected**.

27. Keeping in view the aforesaid conduct of the public prosecutor in making a request for declaring PW-2 in Sessions Case No. 747 of 2023 in the Court of Additional Sessions Judge, Court No. 16, Lucknow to be hostile even when he was fully supporting the prosecution case, the Legal Remembrancer / Principal Secretary (Law) is directed to look into this matter and take suitable action against the public prosecutor in the aforesaid case in accordance with law.

28. Further, keeping in view the fact that the presiding officer of the Court of the Additional Sessions Judge, Court No. 16, Lucknow has accepted the request made by the public prosecutor and declared PW-2 to be hostile even while PW-2 was fully supporting the case and he has fixed numerous dates for cross-examination of the PW-2 at long intervals, during which the victim changed his statement to support the applicant, the Sessions Judge, Lucknow is directed to transfer Sessions Trial No. 747 of 2023 from the Court of Additional Sessions Judge, Court No. 16, Lucknow to some other Court to ensure that the trial is conduct fairly, without any undue influence at the behest of the accused persons.

29. The Senior Registrar of this Court is directed to communicate this order to the Legal Remembrancer/Principal Secretary (Law) and the Sessions Judge, Lucknow to ensure its compliance. Let a copy of this order be sent to the Hon'ble Administrative Judge of Lucknow Judgeship also for information.

(Subhash Vidyarthi J)

Order Date: 18.10.2024
Pradeep/-