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Court : Rajasthan

Decided On : Jul-04-1988

Reported in : 1988WLN(UC)311

Judge : Farooq Hasan, J.

Appeal No. : S.B. Cr. Misc. Seventh Bail Application No. 1925 of 1988

Appellant : Arjun Singh

Respondent : State of Rajasthan

Disposition : Application allowed

Judgement :

M.B. Sharma, J.

1. This is seventh bail application in a case where the accused was arrested on January 27, 1986 for the alleged murder of his wife. The charge sheet was filed on April 28, 1986 and the accused is facing trial along with another accused Guman Singh, who is on bail.

2. The first bail application filed by the accused petitioner was dismissed by this Court under order dated April 17, 1986 observing that the accused may approach this Court again after the charge sheet is filed. The second bail application being S.B. Criminal Misc. Second Bail Application No. 1134/1986 was filed on the

ground that since, the petitioner has remained in custody for 90 days and charge sheet was not filed within 90 days he is entitled to be released on bail. That application, was dismissed by this Court on June 30, 1986 as a view was taken that the time of 24 hours in police custody after the arrest is to be excluded under Section 167 Cr. PC. Another application being S.B. Criminal Misc. Third Bail Application No. 2417 of 1986 was filed on September, 1986 and that application was not, pressed, and therefore, the same was dismissed under order dated, September 23, 1986. Earlier to this the petitioner moved a bail application, being S.B. Criminal Misc. Bail Application No. 1964 of 1987 which was dismissed on August 11, 1987. The learned Public Prosecutor undertook to examine remaining material six witnesses within two months. Taking this into consideration the Court did not think it fit to enlarge the accused on bail. This Court also orderd--

I extend the time by four months from the date original time granted by this Court expires as sought by the trial Court.

Another bail application NO. 3057 of 1986 was dismissed by this Court directing the trial Court to examine material witnesses first. Four month's time was fixed under the aforesaid order to examine the material witnesses after framing of the charge, and it was observed that as and when the material witnesses are examined in the trial Court, the accused-petitioner may move the trial Court, and, if necessary, this Court for bail. That application was numbered as the fifth bail application. It appears that during the aforesaid time of four months the material witness were examined but the trial did not conclude. It was after the aforesaid order that S.B. Criminal Misc. Sixth Bail Application No. 3438 of 1987 was filed in this Court after the examination of material witnesses. That application was dismissed on November 30, 1987. This Court observed that looking to the fact that the trial of the case is at the fag end, it will not be proper to release the accused on bail. This Court directed the trial Court to complete the trial within three months. Mr. Tyagi undertook to complete the trial within the aforesaid period, so far as prosecution evidence is concerned. It appears that after the aforesaid order was made the trial had not yet been concluded and four witnesses of the prosecution, two alleged witnesses of recovery of a 'Gadda' as well as of tempo are yet to be examined. Though one of the Investigating Officer was present on June 30, 1988,

but he was not examined by the Public Prosecutor on the ground that he being the Investigating Officer, he will be examined, after the remaining witnesses of the prosecution namely the witnesses of recovery are examined. From narration of the above facts it will be clear that for no fault of the accused or of the complainant but on account of the Public Prosecutor of the CBI the trial of the case in which the accused is in custody since January 27, 1986 almost for 31 months has not been concluded. It is a very sad state of affairs. When this Court directed to conclude the trial of the case and the learned Public Prosecutor undertook to conclude the trial within two months, the trial has not been concluded. It appears that the Court has no control over the prosecution.

3. Sessions cases should be taken up day to day and should be concluded as soon as possible. The tendency to give long dates sometime dates of more than a month is to be deprecated in sessions cases. It is against the provisions made for disposal of Sessions case in General Rules (Criminal) 1979 for short here in after referred to as 'the Rules'). Chapter IV of the Rules deals with trials in courts of Sessions. Rule 42 provides that Sessions cases should be disposed of with the greatest possible expedition. Sessions Judge should reserve particular number of day in a week for session work. It also provides that in cases where the Sessions Judge decides to proceed under Section 228(1)(b) of the Code, of Criminal Procedure, he shall after recording the plea of the accused, shall fix the date for the evidence of the prosecution and may on the application, of the prosecution, issue process forth with for compelling the attendance of witnesses or the production of any document or other thing. Rule 43 provides that sessions trial should ordinarily be held in order in which commitments are made. Presiding Officer may however exercise his discretion in the matter of giving priority to certain cases particularly cases involving capital sentence subsequently received or where the accused is in jail. Once a sessions trial is opened the Sessions Judge shall see that it is disposed of in the same session and not adjourned to next session. It also provides that the sessions cases shall be taken up day to day until all the witnesses in attendance have been examined and discharged. The Sessions Judge shall take necessary steps to get the summons served on the witnesses in time and if necessary the Superintendent of Police of the district may be asked to make special efforts to secure the attendance of the witnesses. It

further provides that a sessions trial shall not be adjourned or postponed except in exceptional circumstances for reasons to be recorded in writing. That the aforesaid rule made for expeditious disposal of sessions cases is only being obeyed in its breach and not in its compliance and sessions cases are not taken up from day to day, but are adjourned or postponed without any reasons being recorded and without any exceptional circumstances. Sooner the Rule 43 is complied with the better it will be. It is well known that disposal of criminal cases, more so sessions case is delayed is beneficial mostly to the accused and not to the prosecution.

4. This Court in several casee has taken a view that if direction is given by this Court to dispose of a case within specific time and if for no valid reasons the trial is not concluded within specific time, then the accused should be released on bail. In the case of Lokesh Bhardwaj v. State of Raj. (supra) a Judge of this Court took a view in the fifth bail application that the accused-petitioner is not expected to suffer on account of any mistake or delay in the office of this Court and if the trial is not completed within time specified by this Court, then the accused should be released on bail.

5. Mr. Tyagi, learned Counsel for the CBI again made a request to grant time till July 13, 1988 fixed in the case for examining all the witnesses of the prosecution. Such an undertaking was given earlier also, but was not adhered to and it was stated that the process server who went to serve the witnesses failed to discharge his duties and not acted in process of the trial Court. If the witnesses refused to give bail, he should have been arrested and produced before the Court, but it is not fault of the accused that trial could not be completed for 31 months and despite several directions by this Court to complete the trial within specific time. All the material witnesses have been examined and this is not the case of the prosecution that if released on bail, the accused shall tamper any of the prosecution witnesses. In the case of present nature, I have this time been refrained from releasing the accused on bail, but there is a limit. If the trial is not concluded, the trial Court commits branch of compliance of Rule 43 of the Rules, the accused should not be denied bail.

6. Explanation of the learned trial Court be called for as to why he has not complied with Rule 43 of the General Rules (Criminal), 1979 and should be placed before me. He is directed to use all his powers now to expedite the trial of the case.

7. I for reasons aforesaid allow this application and direct that the accused petitioner shall be released on bail on his furnishing a personal bond in the sum of Rs. 20,000/- along with two sureties in the sum of Rs. 10,000/-each to the satisfaction of the trial Court for his appearance before that Court or any other Court on all dates of hearings as and when and where ever called the upon to do so during the pendency of trial against him.

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