
(1993) 01 AHC CK 0029

In the Allahabad High Court

Case No : Criminal Miscellaneous Bail Appeal No. 16310 of 1992

Kamal Uddin

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 20-01-1993

Acts Referred:

Citation : (1993) 01 AHC CK 0029

Hon'ble Judges : S.N.Saxena, J

Judgement

S. N. Saxena, J.—This is the second bail application moved by Kamal Uddin in Case Crime No. 260 of 1990 under Section 302, IPC, Police Station Nagphani, district Moradabad. The earlier bail application was rejected by me on 6th May, 1992.

2. The question whether the applicant is a minor or not was considered in the earlier order. It has been claimed on behalf of the applicant that the earlier order was passed on a copy of Ration Card and the applicant has now brought an endorsement by the concerned authorities that copy of Ration Card cannot be given. I have perused the endorsement. The endorsement, in fact, is that no copy of the enquiry report regarding the Ration Card can be issued. This endorsement, therefore, does not help the applicant at all. Since the question of age has already been considered once, it cannot be considered again.

3. The next point urged on behalf of the applicant is that there has been an unreasonable delay in the trial and, therefore, the applicant should be released on bail. In support the decision of the Supreme Court in Abdul Rehmon Antuley v. R. S. Nayak, AIR 1992 SC 1701 has been cited. In this ruling it was held that whenever a complaint of infringement of right to speedy trial is made the Court has to consider all the circumstances of the case and it is not possible in the very nature of things and present day circumstances to draw a timelimit beyond which a criminal proceeding will not be allowed to go.

4. In this context the copy of the ordersheet filed by the applicant may be

considered. It indicates that the applicant himself applied for adjournment on 15101991, 5121991, 1341992, 1641992, 1151992, 461992, 171992, 2771992, 2781992, 9101992 and 16111992. On the other hand, the complainant moved several applications for expediting the trial including those moved on 1351992, 271992, 2971992, 2781992, 29101992 and 18111992. It is, therefore, apparent that whereas the complaint was making request for speedy trial, the applicant was getting the case adjourned on one pretext or the other. In the decision of 4 R Antuley v. R, S. Nayak (supra) it was held that one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving guilt of accused lies on the prosecution, delay ordinarily prejudices the prosecution. Nonavailability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution.

5. Learned counsel for the complainant Sri M. D. Misra has referred to a Division Bench decision of this Court in Pappoo alias Ashok Kumar v. State of U. P., 1991 ACrR 476, where it was decided that it will not be correct enunciation of law to hold that an accused is entitled to be released on bail only on the ground of delay in the trial.

6. Another point stressed was that coaccused had already been granted bail and, therefore, the applicant should also be released on the ground of parity. In support of this argument two decisions of this Court, namely Nanha v. State of U. P., 1992 JIC 802 (DB) and Shobha Ram v. State of U. P., 1992 JIC 33 (SB) have been cited. The bail order granting bail to coaccused indicates that he was granted bail on the ground of age. The applicant cannot claim parity with an old man and, therefore, he does not get any benefit of the aforesaid decisions. "Parity" means the state or condition of being equal or of a level, equality, equality of rank or status in Shorter Oxford English Dictionary 1936 as quoted in Nanha v. State of U. P. (supra). It has further been decided in that case that the word "parity" connotes State when a person is placed on the same footing as the person. In the present case, the applicant be placed on the same footing with his father who is an old aged ^man. Hence he cannot claim the benefit of parity.

7. For the above reasons, I do not find any merit in this application which is rejected.