A.F.R.
(Reserved)

Case :- BAIL No. - 8364 of 2017

Applicant :- Rajiv Pratap Singh (Raju Singh) (Third Bail)
Opposite Party :- Central Bureau Of Investigation
Counsel for Applicant :- Navneet Kumar Srivastava,Harish Pandey,Rajendra Kumar Dwivedi,Shantanu Mishra
Counsel for Opposite Party :- Amarjeet Singh Rakhra,Ajai Kumar,Ajeet Pratap Singh,Anurag Kumar Singh,Vivek Kumar Rai

Hon'ble Manish Mathur, J.

1. Heard Sri Arvind Varma, Senior Advocate assisted by Mr. Rajendra Kumar Dwivedi, Ms. Meha Rashmi, Sri Harish Pandey and Sri Smrithi Sharma, learned counsel appearing for applicant and Sri Anurag Kumar Singh, learned counsel for the Central Bureau of Investigation-opposite party.

2. This is third bail application of applicant Rajiv Pratap Singh (Raju Singh) with regard to case crime no.RC 1 (S) 2013/CBI/SC-1 under Sections 120-B read with Section 302 I.P.C. and Sections 25 (1) (b) (a), 26 and 27 Arms Act, P.S. CBI/ SC-1/ New Delhi, District Pratapgarh.

3. The first bail application of applicant has already been rejected on merits vide order dated 23.07.2015. The second bail application was thereafter rejected vide order dated 09.08.2016 directing the trial court to finally dispose of the Sessions Trial expeditiously without granting any unnecessary adjournments and to conduct the trial in accordance with Section 309 Cr.P.C., on a day to day basis.

4. In pursuance to directions issued by this Court earlier, the CBI Court, Lucknow has furnished a status report dated 04.12.2020 with regard to sessions trial in the present case. In the said report, it has been indicated that there are a total of 80

prosecution witnesses out of which 16 witnesses have already deposed since start of the trial from 2013. It has been stated that trial could not proceed since March, 2020 due to COVID

19 pandemic. It has subsequently recommenced in October, 2020 but the prosecution witnesses have not appeared on three dates due to the pandemic.

5. The allegations in brief as mentioned in the first information report no.18 of 2013 dated 02.03.2013 are that when complainant Phool Chander Yadav along with his brother Nanhe Yadav, his wife and two daughers and brother-in-law of Nanhe Yadav, who were on their way to home, stopped their Bolero vehicle no.UP 70-W-1805 near the tea shop of Chokhe Lal at Balipur Chauraha for taking tea, Kamta Prasad Pal, his son Ajay Kumar Pal, Ajit Kumar Singh and Rajiv Kumar Singh, both sons of Hari Singh, all hailing from Village Balipur, duly armed with weapons, arrived at the scene of the incident in their Bolero vehicle no.UP-64-7555 and fired many rounds targetting Nanhe Yadav with the intenion to kill him. Due to firing, Nahhe Yadav fell on the ground. This incident was also seen by Kallu son of Mata, resident of Sheikhpur Ashik, Police Station Kunda Kotwali besides many others. Thereafter Nanhe Yadav was brought to Kunada Hospital where the doctor declared him brought dead.

6. Learned counsel for applicant has submitted that although the first bail application was rejected on merits but while rejecting the second bail application, this Court has specifically directed the CBI court to conclude the trial expeditiously. It is submitted that the applicant is in jail since 04.03.2013 and although the trial is continuing since 2013, as yet only 16 witnesses have been examined in the past more than seven years with 64

witnesses remaining. It is further submitted that there is no possibility of trial concluding expeditiously as had been directed earlier. It is further submitted that at the time of rejection of the second bail application in 2016, only one

prosecution witness had been examined and examination of the second prosecution witness was going on, which weighed heavily upon this Court for rejection of the second bail application. It is further submitted that during the time elapsed between the rejection of the second bail application and as on date, it is material factor that a new ground has cropped up which requires to be considered in this bail application.

7. Learned counsel for applicant has submitted that as per the charge sheet submitted by the Central Bureau of Investigation (hereinafter referred to as CBI), the only role assigned to applicant is of providing information with regard to whereabouts of the deceased, in pursuance of which the attack upon him was carried out. It is submitted that the aforesaid charge upon applicant is sought to be substantiated only on the testimony of the sole witness, Nitish Shukla, the alleged driver of the vehicle of applicant. Learned counsel submits that despite the long time having elapsed in the trial and 16 witnesses having been examined, the CBI has failed to produce the said Nitish Shukla for recording of his testimony till date. It is submitted that the CBI has also not indicated as to when they propose to produce Nitish Shukla for recording of his statement. As such, it is submitted that the applicant cannot be kept incarcerated for such a long time for no fault on his part.

8. Mr. Anurag Kumar Singh, learned counsel for CBI has opposed the bail application with the submission that once applicant’s bail had already been rejected on merits and also on

the ground of delay in conclusion of trial, the present bail application is also liable to be rejected since no new ground has been indicated or submitted, which is pre-requisite for considering the third bail application. Learned counsel has referred to numerous judgments of Hon'ble the Supreme Court

indicating the law under which a third bail application can be entertained. It has been further submitted that bail cannot be granted merely on the ground of long detention or that the trial of the case had not progressed. Learned counsel further submitted that the offence indicated against the applicant are quite serious in nature and there is reasonable apprehension of witnesses being influenced and evidence being tampered with. Since some of the important witnesses had expressed apprehension of threat to life and accordingly application was filed in the Court of Special Judicial Magistrate, CBI Cases, Lucknow not to disclose the identity of certain important witnesses which was allowed by the court vide order dated 12.07.2013.

9. Upon consideration of material on record and submissions advanced by learned counsel for parties, it is apparent that conditions for entertaining the third bail application are quite stringent.

10. Hon'ble the Supreme Court in **Kalyan Chandra Sarkar** v. **Rajesh Ranjan @ Pappu Yadav and another** reported in (2004) 7 SCC 528 in paragraphs 11, 12 and 20 of the report has held as follows:-

*"**11.** The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being*

granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v.Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)"

*"**12.** In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted. (See Ram Govind Upadhyay [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .)"*

*"**20.** Before concluding, we must note that though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at least on four occasions order refusing bail has been affirmed by this Court and subsequently when the High Court did grant bail, this Court by its order dated 26-7-2000 cancelled the said bail by a reasoned order. From the impugned order, we do not notice any indication of the fact that the High Court took note of the grounds which persuaded this Court to cancel the bail. Such approach of the High Court, in our opinion, is violative of the principle of binding nature of judgments of the superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render ineffective the principles enunciated therein which have a binding character."*

11. With regard to granting of bail only on the ground of unlikelihood of trial concluding in near future, it has been held as follows in the same judgment:-

*"**14.** We have already noticed from the arguments of learned counsel for the appellant that the present accused had earlier made seven applications for grant of bail which were rejected by the High Court and some such rejections have been affirmed by this Court also. It is seen from the records that when the fifth application for grant of bail was allowed by the High*

Court, the same was challenged before this Court and this Court accepted the said challenge by allowing the appeal filed by the Union of India and another and cancelled the bail granted by the High Court as per the order of this Court made in Criminal Appeal No. 745 of 2001 dated 25-7-2001 [Rajesh Ranjan v. State of Bihar, (2000) 9 SCC 222] . While cancelling the said bail this Court specifically held that the fact that the present accused was in custody for more than one year (at that time) and the further fact that while rejecting an earlier application, the High Court had given liberty to renew the bail application in future, were not grounds envisaged under Section 437(1)(i) of the Code. This Court also in specific terms held that the condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of

trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

12. Similarly, in **Chenna Boyanna Krishna Yadav** v. **State of Maharashtra & another** reported in (2007) 1 SCC 242, it has been held as follows:-

"16.....It is true that when the gravity of the offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in the near future either by itself or conjointly may not entitle the accused to be enlarged on bail. Nevertheless, both these factors may also be taken into consideration while deciding the question of grant of bail."

13. Learned counsel for the applicant has placed reliance on judgment rendered by Hon'ble the Supreme Court in **State of Rajasthan, Jaipur** v. **Bal Chand** reported in AIR 1977 Supreme Court 2447 in which the following has been held:-

"2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime....."

14. He has also placed reliance on the judgment of Hon'ble the Supreme Court in **Kashmira Singh** v. **State of Punjab** reported in (1977) 4 SCC 291 in which the following has been held in paragraph 2 of the report:-

*"**2.** The appellant contends in this application that pending the hearing of the appeal he should be released on bail. Now, the practice in this Court as also in many of the High Courts has been not to release on bail a person who has been sentenced to life imprisonment for an offence under Section 302 of the Penal Code, 1860. The question is whether this practice should be departed from and if so, in what circumstances. It is obvious*

that no practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: "We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a Judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence."

15. Upon applicability of the aforesaid judgments in the present case, it is apparent that the present bail application, being the third bail application, is to be seen not only with regard to

gravity of offence and other like factors but also on the ground of any change in the fact situation which requires the earlier view taken by this Court to be interfered with.

16. Upon perusal of aforesaid judgments, it is clear that Hon'ble the Supreme Court has not put an embargo upon consideration of long period of incarceration of an undertrial as a factor while considering subsequent bail applications. It is clearly seen that such a factor can be considered by the Court

concerned while hearing subsequent bail applications but the said factor has to be seen along with other relevant factors as indicated in the judgments hereinabove.

17. Although in the first information report, allegation of applicant also having fired upon the deceased has been made but in the counter affidavit dated 17.12.2017 filed by the CBI , the role of applicant has been limited to providing information of whereabouts of deceased to the actual killers as has been indicated in the charge sheet filed against applicant and of supplying weapon used.

18. It is very relevant that in paragraph 25 of the counter affidavit, the CBI has doubted the veracity of the complaint itself. The said paragraph of counter affidavit is as follows:-

"25. That in reply to the averments made in para nos. 5 and 6 of the affidavit, it is submitted that in this case the FIR was registered on the written complaint of Phool Chander Yadav, brother of deceased Nanhe Yadav. However, it came to light that the complaint on the basis of which FIR was registered was written by Pawan Kumar Yadav, brother of deceased Nanhe Yadav in his own writing. He has also signed the said complaint as Phool Chander Yadav. At the time of writing the complaint, Phool Chander Yadav was not present where the complaint was being written in the early morning of 03.03.2013 after the dead body of Nanhe Yadav was taken to Pratapgarh for post mortem. This clearly establishes that a concocted version was mentioned in the complaint which was signed by Pawan Yadav posing as Phool Chander Yadav. The FIR was lodged on 03.03.2013 and not on 02.03.2013 as has been shown in the document. "

19. The CBI in its counter affidavit has assigned the role of firing upon the deceased to Ajai Kumar Pal and Vijai Kumar Pal with no role of firing being assigned to applicant whose role as per the charge sheet is limited to providing information of whereabouts of the deceased and of supplying the weapons which were used in the actual killings.

20. Aforesaid charges against the applicant have been sought to be proved by the CBI upon testimony of one Nitish Shukla and one other person as indicated in paragraph 28 of the counter affidavit, although the said other person remains unnamed. It is

relevant that as per the report submitted by the CBI Court, neither of aforesaid two persons have been produced by the CBI as witness in the trial proceedings till date. The counter affidavit is also silent as to when the CBI intends to produce the said two persons as witnesses in the trial.

21. It is a relevant fact that at the time of rejection of first bail on 23.07.2015, the trial proceedings were at a nascent stage with only one prosecution witness having been examined. Even at the time of rejection of the second bail application on 09.08.2016, the fact situation had not changed with only one prosecution witness having been examined and deposition of the second prosecution witness being underway. It was in these circumstances that the second bail application was rejected since no new good ground had been put forth by applicant. However, in view of the right of applicant to a speedy trial, direction had been issued to expedite the final decision of the Sessions Trial without granting any unnecessary adjournment and to conduct the trial in accordance with Section 309 Cr.P.C. on day to day basis.

22. It is also a rlevant fact that subsequent to order dated 09.08.2016, 15 witnesses have further been examined during the trial but as on date they do not constitute even 1/4th of the total 80 witnesses that are sought to be produced as prosecution witnesses by the CBI. The applicant has been in custody as an undertrial since 04.03.2013, i.e. more than seven and a half years.

23. The aforesaid factor clearly indicates the changed circumstances between rejection of the second bail application till today. Learned counsel for applicant therefore apprears to be quite correct in his submission that with just 16 witnesses having been examined out of a total of 80 witnesses to be

produced by the CBI as prosecution witnesses, there is no hope of trial concluding even in far future, let alone the near future.

24. Although the offence with which applicant has been charged is a serious one but it is also a relevant factor to consider that the said charge being based on the testimony of two witnesses, neither of the two have been produced by the CBI in the trial, which is pending since 2013. Even counter affidavit of the CBI is silent with regard to the time frame within which the said two witnesses are to be produced in the trial proceedings. Prima facie, it appears that without the testimony of corroborating witnesses, evidence against the applicant is circumstantial at best and at present there cannot be any definitive conclusion that the offence with which the applicant is charged can be prima facie made out at this stage and would therefore be dependent upon evidence to be relied upon by CBI in future particularly by producing witnesses to support the same.

25. The CBI in its counter affidavit has stated that enlarging the

applicant on bail could have an adverse effect on the trial since there is a likelihood that the applicant may try to influence the witnesses and tamper with evidence. However, except for a bland statement in the counter affidavit, there is not even a shred of prima facie evidence adduced by the CBI to support such claim. The only factor indicated in counter affidavit is that upon such apprehension, an application was filed before the trial court not to disclose the identity of certain important witnesses, which was allowed by the Court vide order dated 12.07.2013. However, it has not been indicated as to whether the application was filed by the witnesses or by CBI itself. As such, the apprehension of applicant tampering with evidence and influencing witnesses remains merely a bland statement at

best, which has already been denied by the applicant in his reply.

26. The aforesaid factors clearly indicate the circumstances which have changed in the past more than four years since the date of rejection of the second bail appliation, particularly with regard to factor as to whether an undertrial can be indefinitely incarcerated during pendency of trial proceedings particularly in the present circumstances where not even 1/4th of the witnesses have been produced during the trial. Of particular importance is the factor that even after producing 16 witnesses, the CBI has not produced the two important witnesses against applicant till date nor is there any indication that they would be produced before the trial court in near future.

27. Hon'ble the Supreme Court in **Sanjay Chandra** v. **Central Bureau of Investigation** reported in (2012) 1 SCC 40 has held as follows:-

"21. *In bail applications, generally, it has been laid down from the earliest times*

that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty."

***"22.** From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances."*

***"23.** Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."*

Hon'ble the Supreme Court in the said decision has further held as under:-

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***"40.** The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required."*

***42.** When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case.*

***"43.** There are seventeen accused persons. Statements of witnesses run to several hundred pages and the documents on which reliance is placed by the prosecution, are voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that the accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet."*

*"**44.** This Court, in State of Kerala v. Raneef [(2011) 1 SCC 784 : (2011) 1 SCC (Cri) 409] has stated: (SCC p. 789, para 15)*

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dickens's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille."

***"46.** We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."*

28. Recently, Hon'ble the Supreme Court in Criminal Appeal No.742 of 2020 (**Arnab Manoranjan Goswami** v. **State of Maharashtra and others**) has held as follows:-

"63. More than four decades ago, in a celebrated judgment in State of Rajasthan, Jaipur v. Balchand [(1977) 4 SCC 308], Justice Krishna Iyer pithily

reminded us that the basic rule of our criminal justice system is 'bail, not jail'. The High Courts and Courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the 'subordinate judiciary'. It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground - in the jails and police stations where human dignity has no protector. As judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the "solemn expression of the humaneness of the justice system". Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this court. We have done so in order to reiterate

principles which must govern countless other faces whose voices should not go unheard."

"65.....Every court in our country would do well to remember Lord Denning's powerful invocation in the first Hamlyn Lecture, titled 'Freedom under the Law':

> *"Whenever one of the judges takes seat, there is one application which by long tradition has priority over all others. The counsel has but to say, 'My Lord, I have an application which concerns the liberty of the subject', and forthwith the judge will put all other matters aside and hear it. ..."*

It is our earnest hope that our courts will exhibit acute awareness to the need to expand the footprint of liberty and use our approach as a decision-making yardstick for future cases involving the grant of bail."

29. Hon'ble the Supreme Court in **Ankita Kailash Khandelwal and others v. State of Maharashtra and others** reported in (2020) 10 SCC 670 has held as follows :-

***"23.1.** In Sumit Mehta v. State (NCT of Delhi) [Sumit Mehta v. State (NCT of Delhi), (2013) 15 SCC 570 : (2014) 6 SCC (Cri) 560] , it was observed: (SCC pp. 575-76, paras 11-15)"*

"11. While exercising power under Section 438 of the Code, the court is duty bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. For the same, while granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. The object of putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. So, the discretion of the court while imposing conditions must be exercised with utmost restraint."

"12. The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution."

30. Keeping the aforesaid enunciations by Hon'ble the Supreme Court in mind and upon a perusal of the material on record, it is apparent that without the production of relvant witnesses against the applicant even after seven long years, the charges levelled against the applicant at this stage, at best, are merely charges without any prima facie evidence being produced by the CBI It is also relevant that apprehension against applicant of influencing witnesses and tampering with evidence is also not borne out by any evidence on record. Even with regard to such apprehensions, Hon'ble the Supreme Court in **Ankita Kailash**

Khandelwal(supra) has already held that adequate safeguards can be put in place while granting bail to an undertrial. As has been held in **Sanjay Chandra**(supra), we cannot lose sight of the fact that the investigating agency has already completed investigation and charge sheet has already been filed before the trial court, therefore presence of accused in custody may not be necessary for further investigation. It is also not the case of CBI that the applicant is required to be in custody for any other investigational purposes.

31. In view of aforesaid, this Court is of the considered opinion that the applicant is liable to be enlarged on bail pending trial.

32. Accordingly the third bail application is allowed.

33. Let applicant Rajiv Pratap Singh (Raju Singh), involved in the aforesaid 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 the following conditions:-

(a) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.

(b) He shall remain present before the court on the dates fixed for hearing of the case. If he wants to remain absent, then he shall take prior permission of the court and in case of unavoidable circumstances for remaining absent, he shall immediately give intimation to the appropriate court and also to the Superintendent, CBI and request that he may be permitted to be present through the counsel.

(c) He shall surrender his passport, if any (if not already surrendered), and in case, he is not a holder of the same, he shall swear to an affidavit of the said fact, to be produced before the trial court. If he has already surrendered it before the learned Special Judge, CBI, that fact should also be supported by an affidavit.

(d) It will be open to CBI to make an appropriate application for modification/recalling the order passed by this Court, if for any reason, the applicant violates any of the conditions imposed by this Court.

Order Date :- 25.01.2021

kvg/-