

Court No.-15

Case :- BAIL No. - 5743 of 2019

Applicant :- Gayatri Prasad Prajapati [Second Bail]

Opposite Party :- State Of U.P.Thru.Prin. Secy. Home
Lucknow

Counsel for Applicant :- Bal Keshwar Srivastava, Anand
Mani Tripathi, Avinash Chandra, Shashank Kunwar, Sushil
Kumar Singh, Vivek Tiwari

Counsel for Opposite Party :- G.A., Bijay Raj
Verma, Rajiv Kumar Rai, Sachida Nand

Hon'ble Ved Prakash Vaish, J.

(Bail No.5743 of 2019)

1. Heard Ms. Rukmini Bobde, Advocate and Sri Sushil Kumar Singh, learned counsel for the applicant and Sri Vinod Sahi, learned Additional Advocate General assisted by Sri Diwakar Singh, learned Addl. G.A. for the State.
2. The applicant is an under trial in Case Crime No.29 of 2017 dated 18.02.2017 under Section 376(D), 354A(I), 504, 506, 509 of I.P.C. and Section 5 and 6 of POCSO Act, 2012 registered at police Station Gautampalli, District Lucknow.
3. Adjournment is requested by learned Addl. Advocate General for the State for addressing arguments on the application for regular bail.

4. Learned counsel for the applicant submits that the applicant is suffering from various diseases and an application for interim bail bearing C.M. Case No.99240 of 2019 is pending.

5. Learned A.G.A. for the State submits that arguments on the application for interim bail may be heard.

(C.M. Case No.99240 of 2019)

6. The applicant has moved the present application on 19.08.2019 seeking interim bail on medical grounds for a period of six months; supplementary affidavit on behalf of the applicant was filed on 11.09.2019 and another supplementary affidavit on behalf of the applicant was filed on 07.02.2020. Counter affidavit/ objections to the interim bail was filed on behalf of the State and medical report has been filed.

7. Ms. Rukmini Bobde, learned counsel for the applicant submits that the applicant is in judicial custody since 15th March, 2017 and has been falsely implicated in the present case; the prosecutrix and her daughters have been examined before the trial court and they have not supported the case of prosecution.

8. Ms. Bobde, learned counsel for the applicant has pressed the application for interim bail and points out that the applicant is suffering from the disease i.e. UTI with Diabetes mellitus with HTN with Bamboo spine with seronegative Spondylorthropathy; he was admitted in King George's Medical University, Lucknow (K.G.M.U.) from 03rd May, 2019 and remained in the said hospital till 17th January, 2020; on 17th January, 2020, he was discharged from the K.G.M.U. Hospital, Lucknow although he was not cured from the disease by which he is suffering and sent to Jail, Lucknow; she also points out that there is no adequate medical facility available for the treatment of the said disease in the hospital with which the applicant is suffering and therefore, an application for bail was filed before the trial court, the trial court passed an order dated 4th January, 2020 whereby the Superintendent of Jail was directed to submit a report

whether adequate medical facility is available in the jail hospital or not. She points out that report of Senior Superintendent of District Jail, Lucknow along with supplementary affidavit was filed on 09th January, 2020 and the report is at page no.19 of the supplementary affidavit, there is medical opinion of the doctor concerned of the department of Urology of the K.G. Medical University, Lucknow which reads as under:

"Pt has multiple ailments which require treatment from multiple super specialities, at a tertiary care super specialty hospital. Such treatment is not possible in Jail Hospital.

It is not possible to determine now howmuch time it will take for complete improvement.

Presently Pt is not in position to have movements."

9. Learned counsel for the applicant also points out that the said fact has been admitted by the State in the counter affidavit/ objections to the supplementary affidavit filed in support of the application for interim bail which is sworn by Sri Abhay Kumar Mishra, Circle Officer at Circle Hazaratganj, District-Lucknow, which is evident from the letter dated 16.02.2020 written by Senior Consultant, District Jail Hospital, Lucknow to the Senior Superintendent, District Jail, Lucknow (Annexure No.CA-2 to the counter affidavit). In the said report, it was admitted that the applicant is being treated in K.G.M.U. Hospital, Lucknow; after considering the seriousness of the disease of the applicant, the patient was advised follow up in Urology Department in every Monday, the applicant was examined in Urology Department and thereafter, he was advised X-Ray pelvis, X-ray LS spine USG KUB, Urine flow and blood test (Renal Function test, LFT, Uric Acid); after examination, it was found that Rt. Sided Para spinal spasm and tenderness present over bilateral sacroiliac joint associated with lower lumbar spine radiate to bilateral lower limb due to which patient's movement is difficult and apart from that the patient is suffering from Upper respiratory tract infection.

10. Learned counsel for the applicant further points out that the applicant was again admitted in K.G.M.U. Hospital, Lucknow on

09.03.2020 and thereafter shifted to Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow (S.G.P.G.I.) on 4th June, 2020. Again, the applicant was shifted to K.G. Medical University, Lucknow on 29th June, 2020 and since then, the applicant is admitted in the said hospital; there is no progress as the doctors have stated that proper treatment is not available in K.G.M.U. Hosiptal, Lucknow and the applicant was referred to be treated at tertiary care super speciality which is not possible in Jail hospital.

11. Learned counsel for the applicant points out that the investigation has already been completed, chargesheet has been filed, statement of prosecutrix and doctors have already been recorded where they have not supported the statement of prosecution; the applicant is suffering from various serious diseases and is admitted in hospital since 03rd May, 2019 and not getting proper treatment; learned counsel for the applicant requests that the applicant may be released on interim bail for getting proper treatment.

12. Learned counsel for the applicant further submits that K.G.M.U. Hospital, Lucknow is COVID-19 dedicated hospital and proper treatment is not available in jail hospital.

13. Learned counsel for the applicant further contends that the applicant has moved an appeal bearing Special Leave to Appeal (Crl.) No.1202 of 2018 before the Hon'ble Supreme Court, said petition was decided on 16.05.2018 and the following order was passed;

"We have heard learned counsel for the parties.

We are of the opinion that at this stage, the case for grant of bail is not made out particularly when the prosecutrix is yet to be examined in the trial.

However, at the same time, we urge upon the trial court to expedite the trail and if possible, hold it by giving short dates.

The petitioner shall be at liberty to renew his request for bail before the trial court after the deposition of the complainant is recorded.

The special leave petitions stand disposed of."

Learned counsel for the applicant submits that now, the complainant/ prosecutrix has been examined before the trial court.

14. Sri Vinod Sahi, learned Additional Advocate General for the State submits that the applicant is getting proper treatment in the hospital; earlier he was admitted in K.G.M.U., Lucknow on 03rd May, 2019 and was discharged on 17th January, 2020; again, he was admitted in K.G.M.U, Hospital, Lucknow on 09.03.2020, he was shifted to S.G.P.G.I. hospital, Lucknow on 04.06.2020 and he was shifted to K.G.M.U., Lucknow on 29.06.2020.

15. I have heard learned counsel for the applicant and learned Additional Advocate General assisted by Sri Diwakar Singh, learned Addl. G.A. for the stated and also carefully perused the material available on record.

16. It is not disputed by learned Addl. Advocate General for the State that the applicant is suffering from various diseases; he remained admitted in K.G.M.U., Lucknow from 03rd May, 2019 to 17th January, 2020 and again the applicant was admitted in K.G.M.U. Hospital, Lucknow on 09.03.2020, he was shifted to S.G.P.G.I. on 04th June, 2020 and was thereafter shifted to K.G.M.U., Lucknow on 29th June, 2020 and since then he is admitted in K.G.M.U, Lucknow. It is also not disputed that the statement of prosecutrix has been recorded.

17. The Senior Superintendent of District Jail, Lucknow, in his reprot dated 09th January, 2020 stated that the applicant has multiple ailments which require treatment from multiple super specialities, at a tertiary care super specialty hospital. Such treatment is not possible in Jail Hospital and it is not possible to determine howmuch time it will take for complete improvement; presently patient is not in position to have movements.

18. My learned Predecessor passed the following order on 07.01.2020;

"Heard Sri Bal Keshwar Srivastava, learned counsel for the applicant, Sri V.K.Sahi, learned Additional Advocate General assisted by Sri Anurag Verma, learned Additional Government Advocate for the State.

Sri Bal Keshwar Srivastava, learned counsel for the applicant, while pressing the present short term bail application of applicant, submits that the first bail application of the accused- applicant in case crime no.29 of 2017 under Sections 376(D),354 A(I),504,506,509 I.P.C. and 5 G/6 of POCSO Act , Police Station -Gautampalli, District Lucknow was rejected vide order dated 14.12.2017.

Lastly, the matter went before Hon'ble Apex Court in which an order dated 16.05.2018 was passed which reads as under:-

"We have heard learned counsel for the parties.

We are of the opinion that at this stage, the case for grant of bail is not made out particularly when the prosecutrix is yet to be examined in the trial.

However, at the same time, we urge upon the trial court to expedite the trial and if possible, hold it by giving short dates.

The petitioner shall be at liberty to renew his request for bail before the trial court after the deposition of the complaint is recorded.

The special leave petitions stand disposed of."

Sri Bal Keshwar Srivastava, learned counsel for the applicant submits that the applicant is suffering from diseases in this regard he placed reliance on the documents as contained at page nos.59 to 60 of the affidavit filed in support of application in question issued by Department of Urology, K.G. Medical University, Lucknow U.P. where the applicant is admitted and is getting treatment, however, in the K.G.M.U. Lucknow there is no adequate treatment is available in respect to disease of the applicant, so for the same he has to get specialized treatment as per advice of doctor at some other place.

Sri Bal Keshwar Srivastava, learned counsel for the applicant also submits that on 30.08.2019 this Court has passed an order which reads as under:-

"(Crl. Misc. Case No.99240 of 2019 - Application for short term bail)

Learned AGA may seek instructions in the matter.

List in week commencing 9.9.2019."

However, till date no instructions has been sought on behalf of the State.

Accordingly, it is requested by learned counsel for the applicant that short term bail may be granted to the applicant.

Learned Additional Government Advocate prays for and is granted ten days time to file objection to the affidavit filed in support of the application for short term bail specially mentioning therein as to whether the applicant is suffering from the medical ailment/ disease or not and also as to whether the treatment for the same is available in K.G. Medical University, Lucknow U.P. where the applicant is admitted, or not. As prayed, for getting the said information, the relevant documents/ proper assistance should be provided by the authority concerned of K.G. Medical University, Lucknow.

List on 20.01.2020."

19. On 10.02.2020, this Court granted last opportunity to the State for filing reply in pursuance to the report dated 09th January, 2020. The respondent-State has filed counter affidavit/ objections. Para 7 of the counter affidavit reads as under:

"That in respectful compliance of the order dated 10.02.2020 passed by the Hon'ble Court, the Head of the Department, Urology, K.G.M.U., Lucknow has addressed a copy of the medical report of the applicant/ accused, to the Superintendent, Gandhi Smarak and Associated Hospitals, Lucknow, under a covering letter dated 22.02.2020. The same has been provided to the Office of the learned Government Advocate, in a sealed envelope on 24.02.2020. A true copy of the letter dated 22.02.2020, along with the clinical summary of the applicant, as prepared by the department of Urology, K.G.M.U, Lucknow, is being as Annexure CA-1 to this affidavit."

20. Vide order dated 05.03.2020, this Court directed that the applicant may also be examined by the medical board to be constituted by the Vice Chancellor, K.G.M.U., Lucknow and the said report be placed before this Court.

21. In pursuance of the order dated 05.03.2020 passed by this Court, Vice Chancellor of K.G.M.U., Lucknow has sent the report i.e. clinical

summary given by the Urology Department of K.G.M.U., Lucknow of the accused-applicant. The relevant portion of the same reads as under:

"Pt was admitted and has been started on oral Antibiotics and other symptomatic and supportive treatment. Rheumatology & Neurology consultation was taken & is being followed accordingly. MRI Spine is pending. Patient requires in hospital care at present. Pt. also has multiple ailments which require treatment from multiple super specialities, at a tertiary care super specially hospital.

"Honourable court has passed order dated 03.04.2020 (Bail no.5743 of 2019) Moreover, in the application moved today, it is mentioned that the ward where the applicant-accused is admitted for the treatment at K.G.M.U. is near the ward where the patients of coronavirus are admitted for treatment. Accordingly, Superintendent of K.G.M.U., Lucknow/appropriate authority is directed to submit the report in this regard and in the meantime, necessary steps/precaution may be taken that the applicant-accused should not be infected by corona virus Registrar of this Court is directed to send the copy of this order to the respondent for necessary compliance.

Patient was earlier admitted in Pvt. Super deluxe Ward (Room No.303) which was converted to quarantine ward & due to same, at present patient has been shifted to Urology Ward B in one cubicle which is far away from infective CORONA ward. We have considered the directions of Honourable High Court order no.63/S.R.S/HCL/2020 dated 03.04.2020.

However there is increased risk of getting corona virus infection in any patient admitted in KGMU where many patients of corona are being treated. He is being taken care of properly."

22. My learned Predecessor passed the following order on 03.04.2020:

"The present application has been moved on behalf applicant/accused-Gayatri Prasad Prajapati for

consideration/disposal of the short term bail application (Crl. Ms. App. No.116674 of 2019) through S. K. Singh, Advocate.

I have gone through the contention of the present application as well as material available on record on the basis of which short term bail application has been moved.

In the matter in issue, lastly on 05.03.2020, an order was passed. The relevant portion of the same reads as under :

"Accordingly, in view of the above said facts, as an interim measure, it is provided that the applicant-accused be sent to the department of Urology of K.G.M.U., Lucknow where he should be examined/admitted as per opinion of doctor concerned doctor. However, the admission/treatment of the applicant-accused shall be under the supervision of police authorities/team to be constituted by the concerned authority.

As requested by learned Additional Advocate General, the competent authority is at liberty to constitute a medical board by Chief Medical Officer, Lucknow to examine the illness by which the applicant-accused is suffering and submit the report whether the treatment for the same is available in the Jail Hospital, Lucknow/K.G.M.U., Lucknow or not ?"

From perusal of the present application moved on behalf of applicant/accused, it appears that at present, the applicant/accused is admitted in the department of Urology of K.G.M.U., Lucknow.

However, due to prevailing circumstances i.e. lockdown in order to prevent the coronavirus, the respondent is not able to submit the report as per earlier order dated 05.03.2020 passed by this Court.

So, the respondent is directed to submit the report on the next date i.e. when the court is opened after lockdown.

Moreover, in the application moved today, it is mentioned that the ward where the applicant-accused is admitted for the treatment at K.G.M.U., is near the ward where the patients of coronavirus are admitted for treatment.

Accordingly, Superintendent of K.G.M.U., Lucknow/appropriate authority is directed to submit the report in this regard and in the meantime,

necessary steps/precaution may be taken that the applicant-accused should not be infected by coronavirus.

Registrar of this Court is directed to send the copy of this order to the respondent for necessary compliance."

23. My learned Predecessor passed the following order on 13.05.2020;

Heard learned counsel for the accused-applicant, Ms. Nand Prabha, learned A.G.A. as well as Shri Rajiv Kumar Rai, learned counsel for the respondent. The present application dated 26.03.2020 through e-mail for urgent listing of the short term bail application bearing C.M.A. No.99240 of 2019 has been moved and the same has been placed before me after taking due approval from the Hon'ble Senior Judge.

The grounds on which the present application has been moved for short term bail are as under :-

"1. That the applicant is admitted in K.G.M.U. suffering from UTI with Diabetes melitus with HTN with Bamboo spine with sergonegative Spondylorthropathy.

2. That the health condition of the of the applicant is precarious and dangerous, the KGMU staff is busy with Corona virus infected patients and the medial care of the petitioner is almost nil and he apprehends about his life in such a situation as his death is looming large.

3. That this Court on 03.04.2020 called the report of the risk of getting corona virus infection."

Learned counsel for the applicant-accused submits that the said report is on record.

On 3.04.2020, this Court has passed an order. The relevant portion of the same reads as under :

"In the matter in issue, lastly on 05.03.2020, an order was passed. The relevant portion of the same reads as under :

"Accordingly, in view of the above said facts, as an interim measure, it is provided that the applicant-accused be sent to the department of Urology of K.G.M.U., Lucknow where he should be examined/admitted as per opinion of doctor concerned doctor. However, the admission/treatment of the applicant-accused shall be under the

supervision of police authorities/team to be constituted by the concerned authority. As requested by learned Additional Advocate General, the competent authority is at liberty to constitute a medical board by Chief Medical Officer, Lucknow to examine the illness by which the applicant-accused is suffering and submit the report whether the treatment for the same is available in the Jail Hospital, Lucknow/K.G.M.U., Lucknow or not ?"

From perusal of the present application moved on behalf of applicant/accused, it appears that at present, the applicant/accused is admitted in the department of Urology of K.G.M.U., Lucknow.

However, due to prevailing circumstances i.e. lockdown in order to prevent the coronavirus, the respondent is not able to submit the report as per earlier order dated 05.03.2020 passed by this Court. So, the respondent is directed to submit the report on the next date i.e. when the court is opened after lockdown.

Moreover, in the application moved today, it is mentioned that the ward where the applicant-accused is admitted for the treatment at K.G.M.U., is near the ward where the patients of coronavirus are admitted for treatment.

Accordingly, Superintendent of K.G.M.U., Lucknow/appropriate authority is directed to submit the report in this regard and in the meantime, necessary steps/precaution may be taken that the applicant-accused should not be infected by coronavirus.

Registrar of this Court is directed to send the copy of this order to the respondent for necessary compliance."

Needless to mention herein that in pursuance to the earlier order passed by this Court, Vice Chancellor of K.G.M.U., Lucknow has send the report i.e. clinical summary given by the Urology department of K.G.M.U., Lucknow, of the accused-applicant and the same has been brought on record. The relevant portion of the same reads as under :-

"Pt was admitted and has been started on oral Antibiotics and other symptomatic and supportive treatment. Rheumatology & Neurology consultation was taken & is being followed accordingly. MRI Spine is pending. Patient requires in hospital care at

present. Pt. also has multiple ailments which require treatment from multiple super specialities, at a tertiary care super specially hospital.

"Honourable court has passed order dated 03.04.2020 (Bail no.5743 of 2019) Moreover, in the application moved today, it is mentioned that the ward where the applicant-accused is admitted for the treatment at K.G.M.U. is near the ward where the patients of coronavirus are admitted for treatment. Accordingly, Superintendent of K.G.M.U., Lucknow/appropriate authority is directed to submit the report in this regard and in the meantime, necessary steps/precaution may be taken that the applicant-accused should not be infected by corona virus Registrar of this Court is directed to send the copy of this order to the respondent for necessary compliance.

Patient was earlier admitted in Pvt. Super deluxe Ward (Room No.303) which was converted to quarantine ward & due to same, at present patient has been shifted to Urology Ward B in one cubicle which is far away from infective CORONA ward. We have considered the directions of Honourable High Court order no.63/S.R.S/HCL/2020 dated 03.04.2020.

However there is increased risk of getting corona virus infection in any patient admitted in KGMU where many patients of corona are being treated. He is being taken care of properly."

On the request of learned counsel for the applicant-accused and learned A.G.A., the same has been read out by Bench Secretary of this Court.

Further, Ms. Nand Prabha, learned A.G.A. submits that Shri Vinod Shahi, learned Additional Advocate General has informed her that the case is to be conducted by him and he wants to seek instructions/file objection in the short term bail application.

Accordingly, time is granted to Shri Vinod Shahi, learned A.G.A. to seek instructions/file objection in the matter in question by the next date of listing.

List/put up on 21.05.2020."

24. Again, on 12.06.2020 the following order was passed by my learned Predecessor:

"Sri Sushil Kumar Singh, Advocate has filed his power on behalf of the applicant. The same is taken on record.

Heard Sri Sushil Kumar Singh, learned counsel for the applicant and Sri Vinod Kumar Shahi, learned Additional Advocate General assisted by Sri Ran Vijay Singh, learned Additional Government Advocate for the State and perused the record.

Today, Sri Sushil Kumar Singh, learned counsel for the applicant has filed supplementary affidavit on behalf of the accused-applicant. The same is taken on record.

Learned counsel for the applicant on the basis averments made in the supplementary affidavit, submits that applicant was admitted to King George's Medical University Lucknow but in most illegal and arbitrary manner he has been shifted to Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow.

He further submits that from the perusal of the documents as contained in annexure no.1 to the affidavit filed today, which is an order of reference issued by Department of Urology of King George's Medical University Lucknow it appears that the applicant has been shifted in the garb of order passed by this Court but the said position is contrary to record as no such direction has ever been issued by this Court. Further the same has been done at the behest of higher authorities with political purpose.

Sri Vinod Kumar Shahi, learned Additional Advocate General states that the submission made by Sri S.K. Singh, learned counsel for the applicant is wholly misconceived and wrong and there is no intention on the part of the authorities of State/King George's Medical University Lucknow to issue the letter as contained in Annexure no. SA-1 to the supplementary affidavit by which applicant has been shifted to Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow at the behest of the order passed by this Court rather the said decision has been taken looking into condition of the applicant

and prevailing circumstances of Covid-19 in King George's Medical University Lucknow.

Sri S.K. Singh, learned counsel for the applicant has disputed the said fact and submits that the said decision has been taken in most arbitrary manner and the opposite parties may shift the applicant from Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow to Lucknow Jail where from he was sent to King George's Medical University Lucknow by the Court order dated 5.3.2020 on the ground that illness which the accused-appellant is suffering no treatment is available in jail hospital as per Jail doctors/ Jail Superintendent.

He further submits that applicant-accused has got apprehension that now he may be shifted to Lucknow jail in order to deny the relief as claimed by him in the matter in spite of the fact that there is no facility in the jail hospital in respect to the medical ailment suffered by him.

Accordingly, Sri Vinod Kumar Shahi, learned Additional Advocate General is directed to file objection/ counter affidavit to the supplementary affidavit filed on behalf of the accused-applicant by the next date of listing.

Looking into the controversy involved in the present case it is hope and trust that concerned authorities shall give proper treatment to the applicant in Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow and also take care that he should not be affected by Covid-19 till further orders passed by this Court.

List the matter on 07.07.2020 showing the name of Sri Sushil Kumar Singh as learned counsel for the applicant."

25. The Hon'ble Supreme Court in '**Dipak Subhashchandra Mehta v. Central Bureau of Investigation**', (2012) 4 SCC 134 while considering the application for grant of bail observed as under:

"23. It is also highlighted that on account of uncontrolled high blood pressure while in custody the appellant has suffered 30 per cent blindness in his right eye and has undergone a surgery for vitreous hemorrhage. It is further pointed out that

the hemorrhage having re-occurred, the doctors have advised a second surgery to save his eyes. However, according to him, the said surgery could not be performed due to continuing uncontrolled high blood pressure and resultant recurring bleeding in the vessel even after first surgery

26. Apart from the above certificate, the very same Medical Officer, Central Jail Dispensary, Ahmedabad has issued another Certificate on 08.09.2011. In the said Certificate, after reiterating the very same complaints finally he concluded "he needs treatment from the Specialist, Super Specialist, Cardiologist and Gastroenterologist & Ophthalmologist for his multiple problems".

xxxxx xxxx xxxx xxxx

31. This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused. [Vide Babba vs. State of Maharashtra, (2005) 11 SCC 569, Vivek Kumar vs. State of U.P., (2000) 9 SCC 443.] But the same should not be applied to all cases mechanically.

32. 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 merits 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. The Court granting bail has to consider, among other circumstances, the factors such as a) the nature of accusation and 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 and; c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.

33. Considering the present scenario and there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in

custody from 31.03.2010, except the period of interim bail, i.e. from 15.09.2011 to 30.11.2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. This Court has repeatedly held that when the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated."

26. In another case '**Bhupinder Singh v. Unitech Ltd.**', Civil Appeal No.10856 of 2016, 2020 SCC Online SC 559, the Hon'ble Supreme Court granted interim bail on the ground that parents of the applicant have tested positive for Covid-19.

27. Having considered the facts and circumstances of the present case and the applicant's medical condition, which is confirmed by the medical status report, it shows that the applicant is suffering from disease i.e. UTI with Diabetes mellitus with HTN with Bamboo spine with seronegative Spondylorthropathy; proper treatment is not available in K.G.M.U. Hosptial, Lucknow and doctors have advised proper treatment from multiple super specialties, at a tertiary care super specialty hospital; further threat to the applicant's health in the prevailing times of Covid-19 pandemic is real and imminent; and in view of the assurances extended on behalf of the applicant that he shall not apprehend or influence the prosecutix and her family members, this Court is persuaded to grant the applicant, Gayatri Prasad Prajapati, interim bail for a period of two months from the date of his release, subject to the following conditions:

(i) The applicant shall furnish a personal bond in the sum of Rupees Five Lakh with two sureties of Rupees Two Lakh Fifty Thousand each to the satisfaction of the concerned trial court.

(ii) The applicant shall not leave the country without prior permission of the trial court and shall ordinarily reside at a place of residence, as assured, far from the place of residence of the prosecutrix and her

immediate family; and the complete address of such place shall be furnished to the Jail Superintendent at the time of release;

(iii) The applicant shall furnish to the Investigating Officer his cell phone number on which the applicant may be contacted and that the number be kept switch on all time.

(iv) The applicant shall surrender his passport, if any, to the Jail Superintendent.

(v) The applicant shall not contact nor visit nor threaten nor offer any inducement to the first informant/ complainant or any of the prosecution witnesses. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that would prejudice the proceedings in the matter; and

(vi) Upon expiry of the period of interim bail, the applicant shall surrender before the concerned trial court/ Superintendent Jail.

28. The application for interim bail stands **disposed of**.

29. A copy of this order be sent to the Jail Superintendent and a copy of order be also sent to learned trial court.

30. Needless to mention here that this Court has not considered merits of the case.

31. List the Bail Application No.5743 of 2019 in the week commencing 28.09.2020 for hearing.

(Ved Prakash Vaish, J.)

Order Date :-03.09.2020

Shanu/-