

**(2009) 07 AHC CK 0282****Allahabad High Court****Case No:** Criminal M. IIInd B.A. No. 13634 of 2008

Ram Naresh

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision:** July 29, 2009**Acts Referred:**

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 309
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302

**Citation:** (2009) 3 ACR 3217**Hon'ble Judges:** Vijay Kumar Verma, J**Bench:** Single Bench**Advocate:** P.C. Srivastava and S.K. Srivastava, for the Appellant; A.G.A., for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

Vijay Kumar Verma, J.

Heard Sri S. K. Srivastava, advocate, holding brief of Sri P. C. Srivastava counsel for the applicant and A.G.A. for the State.

2. In this case, second bail application has been moved on behalf of applicant Ram Naresh seeking bail in Case Crime No. 283 of 2006, under Sections 147, 148, 149, 302, I.P.C., P.S. Shikohabad, district Firozabad.
3. The First Bail Application Bearing No. 26685 of 2006 was rejected on merit vide order dated 14.8.2007, passed by Hon'ble R. N. Mishra, J.
4. Certain arguments on merit has been made by learned Counsel for the applicant in this second bail application, but in view of law laid down by Division Bench of this

Court in the case of Satya Pal v. State of U.P. XXXVII (1998) ACC 287: 1998 (2) ACR 1264 and observations made by Hon"ble Apex Court in Kalyan Chandra Sarkar etc. v. Rajesh Ranjan alias Pappu Yadav LI ( 2005) ACC 727: 2005 (1) ACR 715 (SC), second bail application on the same ground which were available at the time of dismissal of 1st bail application is not maintainable.

5. It is also submitted by learned Counsel that the applicant is languishing in jail since 28.8.2006 and hence on the basis of long detention period in jail, he is entitled to be released on bail, because due to delay in trial, his fundamental right of speedy trial envisaged under Article 21 of the Constitution is being violated.

6. In my considered opinion, on the basis of long incarceration in jail also, the applicant cannot be admitted to bail in this heinous crime. In this context, reference may be made to the case of Pramod Kumar Saxena v. Union of India and others LXIII (2008) ACC 115: 2008 (3) ACR 3216 (SC), in which the Hon"ble Apex Court has held that mere long period of incarceration in jail would not be per-se illegal. If the accused has committed offence, he has to remain behind bars. Such detention in jail even as an under-trial prisoner would not be violative of Article 21 of the Constitution.

7. Consequently, the IIInd bail application is hereby rejected.

8. The trial court concerned is directed to conclude the trial of the applicant and other accused persons within a period of six months making sincere efforts and applying the provisions of Section 309, Cr. P.C.

9. S.S.P., Firozabad also is directed to depute special messenger to procure the attendance of the witnesses after obtaining their summons from the trial court concerned and it must be ensured that the witnesses are produced in the session trial arising out of Case Crime No. 664 of 2007 of P.S., Sikohabad without causing any delay.

10. The office is directed to send a copy of this order within a week to the trial court concerned and S.S.P., Firozabad for necessary action.