

Reserved on 02.03.2022

Delivered on 11.03.2022

Court No. - 1

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11068 of 2021

Applicant :- Mohammad Azam Khan

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

Counsel for Applicant :- Nadeem Murtaza, Amit Jaiswal, Anjani Kumar Mishra, Imran Ullah Khan, Paresh Mishra, Prakarsh

Pandey, S. Safdar Ali Kazmi, Sheeran Mohiuddin Alavi

Counsel for Opposite Party :- G.A.

Hon'ble Ramesh Sinha, J.

- (1) The instant bail application has been nominated by Hon'ble the Chief Justice to this Bench vide order dated 22.02.2022, hence the instant bail application has been listed before this Court.
- (2) Applicant-Mohammad Azam Khan has filed the instant first application for bail under Section 439 of the Code of Criminal Procedure, 1973, seeking bail in Case Crime No. 02 of 2018, under Sections 201, 204, 420, 467, 468, 471 read with 120-B of the Indian Penal Code, 1860 and Section 13 of the Prevention of Corruption Act, police station SIT, district Lucknow (Sadar).
- (3) Heard Shri Kapil Sibal, learned Senior Advocate assisted by Shri Nizam Pasha, Shri Imran Ullah Khan, Shri Nadeem Murtaza and Shri Amit Jaiswal, for the applicant and Shri Vinod Kumar Shahi, learned Additional Advocate General assisted by Shri Anurag Verma, for the State/respondents.
- (4) It has been alleged in the FIR that on a complaint filed by the retired Executive Engineer, U.P. Jal Nigam dated 22.03.2017 regarding the irregular appointment on 1300 vacant posts in U.P. Jal Nigam, the State of U.P., vide letter No. 966पी/छ :-पु-3-2017-10 एस.आई.टी./2017 dated 13th July, 2017, entrusted the matter to the Special Investigating Team, Uttar Pradesh, Lucknow (hereinafter referred to as "S.I.T.") to

conduct enquiry on it. Pursuant to the aforesaid order dated 13th July, 2017, the Additional Director General, S.I.T., Uttar Pradesh, Lucknow vide order dated 18.07.2017, appointed the Inspector Shri Atal Bihari, SIT, Lucknow, as enquiry officer into the matter. After completion of enquiry, the Inspector, SIT, Lucknow had submitted its report dated 28.03.2018 to the State Government. After that, a Committee headed by Principal Secretary (Home), Government of U.P., Lucknow, vide order dated 25.04.2018, approved the recommendation made in the enquiry report dated 28.03.2018 and directed to make further action into the matter.

- (5) Further, it has been alleged in the FIR that during enquiry, it was found that an advertisement was issued for recruitment on the post of Assistant Engineer on 19.11.2016; for recruitment on the post of Junior Engineer on 28.10.2016; and for recruitment on the post of Clerks and Stenographers on 18.06.2016, in total for 1300 posts, by calling applications and examination fee from the candidates through on-line. It is alleged that the Chairman of the Jal Nigam had unauthorizedly approved the proposal of the Managing Director and the Officer-on-Special Duty for conducting the examination of Assistant Engineer and Junior Engineer and for conducting the examination of Clerks and Stenographers through M/s Aptech Ltd., Mumbai without the recommendation of Jal Nigam Board on 25.10.2016 and 19.05.2016, respectively. It has further been alleged that as per Section 7 (3) of the Uttar Pradesh Water Supply and Sewerage Act, 1975 the Chairman of UP Jal Nigam has no managerial authority and there is no provision in the Act for the post of Officer-on-Special Duty (OSD). According to Section 8 of the said Act, the Jal Nigam Board has the right to recruit personnel in the Jal Nigam. It is alleged that the work of communicating the files related to the recruitment to the Special Officer/Chairman without presenting it before the Jal Nigam

Board by the Managing Director has been done with malicious intent in contravention of the provisions of the Act. Computer Based Test (CBT) was conducted on various dates for selection to all the above posts. The Chairman of the UP Jal Nigam, Officer-on-Special Duty, Managing Director, Jal Nigam and other officers of Jal Nigam, in violation of the rules, without submitting the proposal before the Jal Nigam Board and without obtaining the approval from the Government, approved 04 posts for recruitment from the candidates of Computer Science/Electrical and Electronics out of approved 09 posts of Assistant Engineer (Electrical / Mechanical), by misusing the position of the post. The above 04 posts were not approved by the Government. According to the rules of Jal Nigam, the Managing Director and Chairman have no right regarding the change of posts. The proceedings related to the examination of 32 successful candidates for interview of Stenographers dated 20.12.2016, have been unauthorizedly, irregularly and arbitrarily cancelled by the Chairman, causing loss of Government exchequer amounting to Rs 37,50,000.00.

- (6) It is also alleged in the F.I.R. that in the agreement entered between UP Jal Nigam and M/s Aptech Ltd. for the recruitment of the posts in question, it has been mentioned that as soon as the examination is over, the answer key will be displayed. The responsible officers of Jal Nigam and authorized representatives of M/s Aptech Ltd. deliberately conspiring themselves to give undue advantage to ineligible candidates with dishonest and fraudulent intentions, violating the aforesaid provision, had uploaded the answer key on the website of Jal Nigam on 28.02.2017 i.e. after about 02 months after declaration of the result only when demand under the Right to Information Act was made by the candidate(s) for uploading the answer key, because of which, deficiency in answer key and response sheet could not be revealed in time and the candidates did not get the

time to react on it, whereas on 03.01.2017, the candidates were issued appointments after declaring the result and also made joining. After uploading the answer key and response sheet on the website, 43 objections on the questions asked by the candidates in the computer based test and their answers were sent to the U.P. Jal Nigam through representations. With regard to the objections, in the report sent by M/s Aptech Ltd. dated 22.07.2017, it was accepted that in the paper of Assistant Engineer's examination, 07 questions and correct options of 20 questions were found to be wrong. It is alleged that despite knowing the wrong questions/answers by the Managing Director, the result of the examination was not modified deliberately under conspiracy and the primary data of the examination, which was secured on the cloud server and was valuable evidence of the case, deleted/destroyed. Later, in respect of the appointments made on the post of Assistant Engineer, the fact was brought to the notice of the Court in the petitions filed in the Hon'ble High Court, Lucknow Bench that the appointments in question have been found to be void *ab initio*.

- (7) It has also been alleged that the candidates selected for the post of Assistant Engineer, who got less marks in CBT examination, were given maximum marks of 90 percent in the interview, whereas the candidate who got maximum marks in CBT examination was declared failed by providing 58% marks. This process is in relation to many selected candidates. In this way, the entire process of recruitment to these posts has been done irregularly and arbitrarily through criminal mischief. In the selection of the post of Assistant Engineer, 27 questions/answers have been accepted to be wrong by M/s Aptech Ltd. This confession is very serious and from this the criminal act of all the officers/other persons involved in the recruitment process is *prima facie* proved.

- (8) Further, it has been alleged that 04 candidates selected for the post of Assistant Engineer (Electrical / Mechanical) Mohd. Shams. Syed Ahmed Ali, Samrah Ahmed, and Kailash Vishwakarma have given correct answers to 58 questions out of 80 and wrong answers to 22 questions, which are identical (similar). It is for 58 questions to have the same correct answer out of 80 questions, but 22 questions cannot have the same wrong answer. The above crime is certified to be completed with the criminal connivance of the responsible officers of U.P. Jal Nigam and the authorized representatives of M/s Aptech Ltd., the organization conducting the examination. The interview of the candidates for the posts of Assistant Engineer was held on 30-12-2016 and 31-12-2016 and after declaring the result on 03-01-2017 and on issuing appointment letter to the successful candidates on the same date, joining was done, which is evidence of conspiracy on the then officers involved in the examination process.
- (9) It is also alleged that in the CBT examination conducted for the posts of Junior Engineer (Civil and Electrical / Mechanical), the answer to a total of 06 questions and 16 questions is wrong in the answer-key. U.P. Jal Nigam and M/s Aptech Ltd. deliberately did not upload the answer key on the website immediately after the date of examination in order to give undue advantage to each other through criminal collusion and indulged in getting ineligible candidates selected/employed. The merit list was to be prepared after due solution of the above wrong questions and answers, which was not prepared due to the connivance of the responsible officers of Jal Nigam, Chairman, UP Jal Nigam and authorized representatives of M/s Aptech Ltd. and undue advantage has been received by the ineligible candidates and the eligible candidates have been deprived of the opportunity to be selected/employed. These criminal acts are certified against the responsible officers of the

UP Jal Nigam, the Chairman and the authorized representatives of M/s Aptech Ltd. During the investigation, it was found from the collected evidence that the then Managing Director of UP Jal Nigam involved in the recruitment process, other officers, Officer-on-Special Duty, Secretary, Urban Development and Chairman, by misusing their official powers, had made criminal misconduct with the authorized representatives of M/s Aptech Ltd. By making a pact, the recruitment process was made irregular / illegal and in violation of the rules / provisions and deleted / destroyed valuable evidence by deleting the primary data of the examination from the cloud server, giving unfair advantage to the candidates appearing in the examination.

- (10) Shri Kapil Sibal, learned Senior Advocate appearing on behalf of the applicant has argued that Case Crime No. 02 of 2018 registered at police station SIT, District Lucknow (Sadar) relates to the conduct of on-line examination of the U.P. Jal Nigam. At that time, the applicant was the Minister of Urban Development and in that capacity, he was also appointed as Chairman of the U.P. Jal Nigam. He argued that for the conduct of on-line examination, the Jal Nigam selects service providers having experience in conducting on-line examinations. The particular service provider who is ultimately charged with the responsibility of conducting the on-line examinations for recruitment to the U.P. Jal Nigam is recommended through a selection process and the Institution selected is recommended by the Managing Director of the U.P. Jal Nigam and the Minister in-charge has to approve the recommendation before the selected institution is formally granted the contract to conduct the on-line examination. He argued that in this view of the matter, the Managing Director of the U.P. Jal Nigam had submitted a proposal dated 03.03.2016 (Annexure No.9) for conducting on-line examinations through Tata Consultancy Services, which was approved by the applicant being Chairman

of the U.P. Jal Nigam on 04.03.2016 in terms of Sections 9 and 10 of the U.P. Water Supply and Sewerage Act, 1975, however, Tata Consultancy Services expressed its inability to conduct the said examination. Therefore, another proposal/recommendation was made by the Managing Director of the U.P. Jal Nigam for conducting the said on-line examination through M/s Aptech Ltd. vide office note/order dated 19.05.2016, which was also approved by the applicant being Chairman of the U.P. Jal Nigam on 19.05.2016 in terms of in terms of Sections 9 and 10 of the U.P. Water Supply and Sewerage Act, 1975.

- (11) Elaborating his submissions, Sri Sibal has argued that except approving the recommendation of the Managing Director for appointment of service provider i.e. M/s Aptech Ltd. for conducting the said on-line examination, the applicant was not involved in the process of selecting M/s Aptech Ltd. either directly or indirectly. The recommendation for appointing M/s Aptech Ltd. was made by the U.P. Jal Nigam pursuant to the recommendation of the Chief Engineer in the file noting dated 19.05.2016. Moreso, M/s Aptech Ltd. is a listed company on the BSE and NSE and apparently has 32 years of experience in the field of education, training and assessments domain across 33 countries worldwide. It is more than 800 education and training centres across the country. In the State of U.P., M/s Aptech Ltd. has approximately 50 centres covering the entire State and has helped more than 10,000 students getting jobs across various countries. M/s Aptech Ltd. is also an ISO 27001, ISO 9001, CMM Level 3 and Certi-in testified service provider with experience of more than 14 years in delivering assessments using computer based mode of delivery. He submits that the experience within the State of U.P. and other States has been communicated by the Chief Executive Officer & Managing Director, Aptech Ltd. vide letter dated 03.03.2020

to the Chief Minister, State of U.P., Lucknow (Annexure No.RA-3 to the rejoinder affidavit).

- (12) Shri Sibal has drawn the attention of the Court to clause (v) of the aforesaid letter dated 03.02.2020, which reads as under :-

“(v) It has falsely been alleged in the FIR that the original result data of the examination has been destroyed. It is submitted that the said data continues to be retained by Aptech in its archives in compliance with its obligations under the Agreement executed with Jal Nigam. As per Aptech’s data retention policy (as approved by the Jal Nigam) and the terms of the Contract executed between Aptech and Jal Nigam, the data of the examination was retained in Aptech’s primary data center for a period of three months, and thereafter, the data was migrated to the secondary data center (both the primary and secondary data centres are maintained for Aptech by a Company by the name of “Ctrl S”). Thereafter, the data was shifted in the local storage of Aptech which is maintained at its Head Office in Mumbai, and archived. It is pertinent to state that throughout this process and till date, the primary data of the examination remains intact in its original form in a secure format with adequate access controls. Hence, the primary data of the examination has not been tampered with, nor has it been destroyed.”

- (13) Learned Senior Counsel, therefore, has argued that M/s Aptech Ltd. has also stated in the aforesaid letter that the primary data of the examination remains intact in its original form in a secure format with adequate access controls and that the primary data of the examination has not been tampered with, nor has it been destroyed, hence the allegation that the primary data is not available and that the examination was manipulated to include some and exclude other seeking appointment, is incorrect.
- (14) Sri Sibal has argued that on-line examination of the shortlisting candidates were interviewed on 30/31.12.2016 and the final list

of selected candidates was published on 03.01.2017. Soon after the change of Government of U.P. on 18.03.2017, the Government passed an order dated 11.08.2017 terminating the employment of the selected candidates. This order of termination of the selected candidates was challenged by the selected candidates in several writ petitions before this Court at Allahabad. A Division Bench of this Court at Allahabad, vide order dated 28.11.2017, allowed the bunch of writ petitions, leading Writ-A No. 37143 of 2017 : *Ajit Singh Patel and 10 others Vs. State of U.P. and 3 others*, by setting-aside the order of termination dated 11.08.2017 and directed the reinstatement of the writ petitioners along with payment of salary. His submission is that one of the allegation in the FIR against the applicant is that the selection of Assistant Engineer (Electrical/Mechanical) was done by adopting unfair means. This Court at Allahabad, while passing the order dated 28.11.2017, found that out of five candidates qua whom unfair means were alleged since their right and wrong answers were identical, four candidates had appeared in the written examination from different examination centres from different districts and the two candidates who appeared in the same district were in different examination centres, hence it was held by this Court at Allahabad that the State Government by levelling a general allegation, without examining the controversy in the correct perspective, has come to the conclusion that the selection has been made by adopting unfair means. Furthermore, allegation that four posts of Assistant Engineer (Computer Science/ Electronics & Communication/ Electronics & Communication/ Electrical & Electronics) have not been sanctioned by the State Government and, therefore, the entire selection proceedings were illegal, was also rejected by this Court at Allahabad while passing the order dated 28.11.2017 (supra).

- (15) So far as the allegation in the FIR against the applicant is that since the posts were not sanctioned, the applicant should be charged with criminality and be prosecuted, is concerned, Sri Sibal has drawn attention to the Court towards the order dated 28.11.2017 (supra) passed by this Court at Allahabad and has argued that while passing the order dated 28.11.2017 (supra), this Court at Allahabad had considered the allegation levelled against the applicant and has recorded the following observations :-

“It is not acceptable that 4 posts of Assistant Engineer (Computer Science / Electronics and Communication / Electrical and Electronics) have not been sanctioned by the State Government as such the selection against the aforesaid 4 vacancies rendered the entire selection proceedings illegal. The perusal of the Government Order dated 16.11.2016 whereby the permission was accorded to fill up 113 posts, 9 posts of Assistant Engineer (Electrical / Mechanical) which was bifurcated in 5 posts of Assistant Engineer (Electrical / Mechanical) and 4 posts of Assistant Engineer (Computer Science / Electronics and Communication / Electrical and Electronics), the Court finds that the permission to advertise the 9 posts of Assistant Engineer permission was accorded by the Chairman to fill up 4 posts of Assistant Engineer in the discipline of (Computer Science / Electronics and Communication / Electrical and Electronics) which was ratified by the Board of Directors.”

- (16) Sri Sibal, learned Senior Advocate has thus argued that order of the State Government terminating the employment of the selected Assistant Engineers dated 11.08.2017 was passed in violation of principle of natural justice and there was no attempt made to distinguish the case of tainted and non-tainted candidates and, therefore, this Court at Allahabad set-aside the order of termination dated 11.08.2017 while passing the order dated 28.11.2017 (Supra).

- (17) It has been argued by the learned Senior Counsel that the order dated 28.11.2017 was challenged by the U.P. Jal Nigam before the Apex Court by filing Special Leave to Appeal No. 5410-5419 of 2018. The Apex Court, vide order dated 16.03.2018, disposed off the aforesaid SLP with a limited liberty to re-work the answer scripts on the basis of corrections in question and model answers. Pursuant to the aforesaid liberty granted to the U.P. Jal Nigam, a review application, bearing No. 2 of 2018, has been filed before this Court at Allahabad, which was disposed of by this Court at Allahabad vide order dated 25.07.2018. He argued that the order dated 25.07.2018 disposing the review application and the main order dated 28.11.2017 were challenged by the U.P. Jal Nigam before the Apex Court by filing Civil Appeals Nos. 11017-18 of 2018. The Apex Court, vide judgment and order dated 15.11.2018, upheld the judgment of this Court at Allahabad but allowed the Jal Nigam to re-work the question and answer sheets and revise the merit list and issue a fresh reasoned order after providing opportunity of hearing to the affected candidates. His submission is that instead of reinstating the candidates, on 04.12.2018, the U.P. Jal Nigam passed an order of fresh appointment without back wages or continuity of service. Thereafter, the U.P. Jal Nigam once again passed an order terminating the Assistant Engineers, Junior Engineers, Clerks and Stenographers without affording them any opportunity of hearing by passing an order dated 02.03.2020.
- (18) Sri Sibal has argued that the second termination order dated 02.03.2020 was challenged before the Apex Court by filing Writ Petition (Civil) No. 491 of 2010 : *Abhishek Kumar Singh Vs. G.Pattanaik and others* and the Apex Court remanded the matter to this Court at Allahabad vide judgment and order dated 03.06.2021. The matter is presently *sub judice* before this Court at Allahabad. He argued that the applicant being an *ex officio*

Chairman of the U.P. Jal Nigam was not involved in this process of selection and there is nothing to show from the record that he can be attributed with any knowledge of how this process took place nor is there any material on record of his association with a single candidate who was selected. The entire case against the applicant is actuated by *mala fides* considering the fact that the applicant is sought to be made an accused in 87 criminal cases of which he has obtained bail in 84 cases. The instant case is one of the remaining cases in which the applicant is seeking bail. He further argued that applicant has been granted bail in all the cases registered against him except three cases i.e. (1) Crime No. 980 of 2019, Police Station Civil Lines, District Rampur; (2) Crime No. 312 of 2019, Police Station Azeem Nagar, Rampur; and (3) the present case i.e. Case Crime No. 02 of 2018, P.S. SIT, Lucknow.

- (19) It has been argued by the learned Senior Counsel that in case crime no. 980 of 2019, after the bail of the applicant was rejected by a Co-ordinate Bench of this Court, the applicant had filed SLP, bearing SLP (CrI.) No. 2655 of 2021, before the Apex Court. The Apex Court, while appreciating the fact that the charge-sheet has already been submitted after completion of investigation and the cognizance has been taken, was pleased to opine that the continued custody of the appellant may not be necessary for the purpose of investigation and trial. In the present case also, the charge-sheet has been submitted and the cognizance on the same has been taken.
- (20) Sri Sibal has further argued that now charge-sheet has been filed in the present matter on 24.05.2021 resurrecting several baseless claims and allegations that were finally decided by this Court at Allahabad vide judgment and order dated 28.11.2017 (Supra), which was affirmed by the Apex Court. He argued that against the applicant, four allegations have been made in the charge-sheet, which are as under :-

“(i) Despite the Chairman having no powers under Section 7 (3) of the U.P. Water Supply and Sewerage Act, 1975, the accused bifurcated 9 posts of Assistant Engineer (Electrical/Mechanical) to create 4 posts of Assistant Engineer (Computer Science/Electronics and Communication/Electrical and Electronics) under criminal conspiracy for the purpose of appointing candidates of his choosing.

(ii) Despite the Chairman having no powers under Section 7 (3) of the U.P. Water Supply and Sewage Act, 1975, the accused appointed M/s Aptech, an agency of his choosing, under criminal conspiracy for the purpose of appointing candidates of his choosing.

(iii) In violation of administrative duties and acting in excess of his duties, for illegal gain and in violation of rules, pursuant to a criminal conspiracy, the accused during the selection process forged a valuable security and increased the CBT (computer based test) score of 169 ineligible candidates because of which eligible candidates could not be selected.

(iv) Another allegation made against the applicant is of cancellation of an earlier process of selection of stenographers, which process was closed to completion.”

- (21) The submission of learned Senior Counsel is that there is no factual averment in the charge-sheet to substantiate an allegation of forgery against the applicant and no explanation has been given as to the valuable security alleged to have been forged, therefore, Sections 467, 468 and 471 of the Indian Penal Code could not be attracted. He argued that there is no factual averment that the applicant fraudulently or dishonestly induced any person to part with any property or make, alter or destroy any valuable security. Therefore, there is no basis in the charge-sheet for invoking Section 420 of the Indian Penal Code against the applicant.

- (22) Insofar as the charges under Sections 201 and 204 of the Indian Penal Code are concerned, Shri Sibal has argued that M/s Aptech Ltd. has filed an affidavit before this Court at Allahabad in writ petitions challenging the order of termination of Junior Engineers that the primary data of computer based test is still available with them and the Special Investigating Team has never asked for the said data despite it being brought to their notice. However, the applicant had no role to play in respect of the allegations relating to the preservation of primary data. The Special Investigating Team seems to be falsely claiming that the primary data of the Computer Based Test has been destroyed and making false allegations of destruction of evidence. Similarly, there is no allegation regarding fraudulent misrepresentation or conversion of any property entrusted to him as a public servant nor is there any recovery has been stated in the charge-sheet to explain how a charge under Section 13 of the Prevention of Corruption Act, 1988 is made out against the applicant. He argued that since Aptech has stated that the primary data of the Computer Based Test is intact and is still available with them, the question of invoking Section 66 of the Information Technology Act, 2000 relating to damaging a computer system does not arise.
- (23) So far as the allegation relating to cancellation of an earlier selection process of Stenographers which was on the verge of completion is concerned, the decision for the same was taken by the Managing Director and other officers of the U.P. Jal Nigam. He argued that as the number of successful candidates selected for the interview was not sufficient, and upon the proposal of the Managing Director and Chief Engineer, the applicant only approved the said proposal.
- (24) Shri Sibal has argued that out of 15 accused persons of the instant case, 12 persons had earlier preferred anticipatory bail

applications and the same were granted interim relief by a Co-ordinate Bench of this Court, which was later on confirmed by the Co-ordinate Bench of this Court by passing order dated 23.09.2021 in a bunch of Anticipatory Bail Applications, leading Bail No. 10301 of 2020, whereas the anticipatory bail application of two accused persons is pending disposal, however, they were granted interim protection by a Co-ordinate Bench of this Court.

- (25) Shri Sibal has argued that the applicant has joined the investigation on 01.10.2020 when he was called for the first time by the Investigating Officer and after that, he was never called by the Investigating Officer in the instant case. He argued that the applicant has been incarcerated in jail in the present case since 19.11.2020. The FIR of the instant case has been registered on account of political vendetta. He argued that applicant has always co-operated with the enquiry officer/Investigating Officer during the course of enquiry/investigation in the present FIR. There is no allegation of influencing the prosecution witnesses by applicant during course of investigation. Further there is no apprehension that the applicant is likely to influence the prosecution witnesses and there is no supporting material on the possibility of applicant influencing witnesses. The applicant is neither in political power nor is he holding any post in the Government of the day so as to be in a position to interfere with the course of justice or tamper with the witnesses. More so, almost all the prosecution witnesses are official witnesses. The applicant is law abiding citizen having deep roots in the society and he is not a flight risk and is willing to abide by all the conditions as may be imposed by this Court while granting bail.
- (26) Per contra, Shri Vinod Kumar Shahi, learned Additional Advocate General appearing on behalf of the State has vehemently opposed the prayer of bail of the applicant and has

argued that looking to the nature and gravity of the offence committed by applicant, the applicant is not liable to be enlarged on bail. It is submitted that after a detailed investigation, applicant and the other co-accused have been charge-sheeted for the offences under Sections 201, 204, 420, 467, 468, 471 read with Section 120-B IPC and Section 13 of the Prevention of Corruption of Act for having hatched the conspiracy for the recruitment of different posts in the Jal Nigam being Chairman of the Jal Nigam. He argued that the posts in question, which were advertised, were not duly sanctioned by the Government. There is condition precedent that before declaration of the final result, answer key ought to be published so that aggrieved candidate, if any, may raise objection but this has not been done in the instant case. He argued that the office of the Chairman of the Nigam shall not be deemed to be an office of profit and shall have no authority on managerial function of the Nigam as per Section 7 (3) of the Uttar Pradesh Water Supply and Sewerage Act, 1975 but even then, the applicant being Chairman of the Jal Nigam had exercised the said power.

- (27) So far as four allegations made in the charge-sheet against the applicant is concerned, learned Additional Advocate General has very fairly stated that there is no direct evidence against the applicant in the charge-sheet and he only submitted that the applicant being a powerful and influential person, no direct evidence could be collected against him.
- (28) The pleadings between the parties have been exchanged.
- (29) I have examined the submissions advanced by the learned Counsel for the parties and gone through the record.
- (30) Initially the First Information Report, bearing Case Crime No. 02 of 2018, under Sections 409, 420, 120-B, 201 I.P.C. and

Section 13 (1) of the Prevention of Corruption Act was lodged at police station S.I.T., district Lucknow (Sadar), against the applicant and co-accused persons on the allegations of irregular recruitment/appointment being made on 1300 posts in the Jal Nigam through M/s Aptech Ltd., Mumbai. After due investigation, the Investigating Officer has submitted charge-sheet dated 24.05.2021 against the applicant and co-accused person Girish Chandra Srivastava under Sections 201, 204, 420, 467, 468, 471 read with Section 120B I.P. and Section 13 of the Prevention of Corruption Act. The trial Court has taken cognizance on the aforesaid charge-sheet. After that, the applicant had approached the Special Judge (Anti-Corruption) (C.B.I.) (Central), Lucknow by filing bail application bearing No. 5968 of 2021 (C.N.R.No. U.P.L.K.O. 1009669 2021), which was rejected by the Special Judge (Anti-Corruption) (C.B.I.) (Central), Lucknow, vide order dated 10.09.2021. Now, the applicant has filed the instant first application for bail before this Court.

(31) Before going further, this Court deem it appropriate to refer some of the decisions of the Apex Court in regard to grant of bail, which are as under :-

(I) In **Prahlad Singh Bhati vs. NCT of Delhi & others:** (2001) 4 SCC 280, the Apex Court highlighted the aspects which are to be considered by a court while dealing with an application seeking bail. The same is reproduced as under :-

"The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of

the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations.

It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge."

- (II) In **Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav & Anr.** : (2004) 7 SCC 528, the Apex Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, the court is required to indicate the prima facie reasons justifying the grant of bail.
- (III) In **Prasanta Kumar Sarkar vs. Ashis Chatterjee** : (2010) 14 SCC 496, the Apex Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. The Apex Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under :-

"It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously,

cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail."

(IV) In **Anil Kumar Yadav vs. State (NCT of Delhi)** : (2018)

12 SCC 129, it is observed and held by the Apex Court that while granting bail, the relevant considerations are, (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering.

(32) In the instant case, four charges, as referred hereinabove, have been levelled against the applicant. On specific query being made to learned Additional Advocate General about the said four allegations levelled against the applicant in the F.I.R. and what clinching evidence has been collected during the course of the investigation showing his active role in the recruitment process in question on the basis of which charge-sheet has been

submitted against the applicant, learned Additional Advocate General has very fairly stated that there is no direct evidence against the applicant in the charge sheet and he only stated that the applicant being a powerful and influential person, no direct evidence could be collected against him.

- (33) It has been pointed out that in all, 87 criminal cases have been registered against the applicant. The applicant has been released on bail in all cases, except two cases including the present case.
- (34) It is noticed that at present, the applicant is no longer holding any post in the affairs of the State. There is no further chance of tampering the evidence. The charge-sheet has been filed on 24.05.2021 and the trial Court has taken cognizance on it. It further transpires that on the recommendation of the Managing Director and officials of the U.P. Jal Nigam, the applicant being the Chairman of the U.P. Jal Nigam had only consented the recruitment to be done by M/s Aptech Ltd. when TCS shown its inability to conduct the said on-line examination.
- (35) Without expressing any opinion on the merits of the case and taking into account the facts that out of fifteen accused persons of the instant case, twelve accused persons have been granted anticipatory bail by a Co-ordinate Bench of this Court and two accused persons have been granted interim bail; applicant has been incarcerated in jail in the instant case since 19.11.2020; the learned Additional Advocate General has failed to point out any clinching evidence from the charge-sheet against the applicant, which shows the active participation of the applicant in the recruitment process in the U.P. Jal Nigam; learned Additional Advocate General has also failed to indicate any misappropriation or financial irregularity on the part of the applicant but only stated that the selection process for recruitment in U.P. Jal Nigam was irregular and not in accordance with the prescribed procedure, which was

adjudicated and decided in writ petition by a Co-ordinate Bench of this Court; charge-sheet has been submitted against the applicant and the trial Court has taken cognizance on it; and there is no further chance of tampering the evidence, this Court is of the view that the continued custody of the applicant, *prima facie*, may not be necessary for the purpose of further investigation and trial in the instant case.

(36) Accordingly, the instant application for bail is **allowed**.

(37) Let the applicant, **Mohammad Azam Khan**, involved in Case Crime No. 02 of 2018, under Sections 201, 204, 420, 467, 468, 471 read with Section 120-B I.P.C. and Section 13 of the Prevention of Corruption Act, Police Station SIT, District Lucknow (Sadar) be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions:-

- (i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial;
- (ii) The applicant shall co-operate in the trial. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.
- (ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause,

the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court, absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(v) The applicant shall not leave India without the previous permission of the concerned trial Court and if he has passport, the same shall be deposited by him before the concerned trial Court.

(38) The trial Court is directed to expedite the trial of the aforesaid case and conclude the same, in accordance with law, expeditiously, if there is no legal impediment.

(Ramesh Sinha, J.)

Order Date :- 11th March, 2022

Ajit/-