

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10767 of 2020

Applicant :- Kheem Singh Bora @ Matrey @ Prakash @ Rajan @ Vijaypahru

Opposite Party :- State Of U.P. Thru A.T.S. Lucknow

Counsel for Applicant :- Gulam Mustafa

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. Sri Gulam Mustafa, learned counsel for the applicant and Sri Shiv Nath Tilhari, learned counsel for the A.T.S. as well as learned AGA for the State.

2. By means of the present application, the applicant- Kheem Singh Bora @ Matrey @ Prakash @ Rajan @ Vijaypahru, seeks bail in Case Crime No.5 of 2019, under Sections 3/25 of Arms Act and 20/38 of Unlawful Activities (Prevention) Act, 1967, Police Station- ATS Gomtinagar, District- Lucknow, during the pendency of trial.

PROSECUTION STORY

3. As per the prosecution story, one Manish Srivastava was taken on police custody remand by ATS Gomtinagar, Lucknow in Case Crime No.4 of 2019 and he revealed that the applicant (Kheem Singh Bora) is the Secretary of Bhartiya Communist Party (Maoist) in the State of Uttarakhand. He further revealed that a meeting is proposed to be held at Dhanbad, Jharkhand related to above said organisation and the applicant was to leave to Dhanbad by train via Bareilly on 17.07.2019 for participating in the said meeting. On the basis of aforesaid information, the ATS team arrested the applicant on 17.07.2019 at 19:50 AM and recovered one country made pistol 315 bore, five live cartridges and literature related to the banned organisation Bhartiya Communist Party (Maoist). The case was registered bearing Case Crime No.05 of 2019, u/s 3/25 of Arms Act

and Sections 20/38 of U.A.P. Act, 1967 at P.S. ATS Gomtinagar, Lucknow.

RIVAL CONTENTIONS

4. It is submitted by the learned counsel for the applicant that he has been falsely implicated in the present case. The pamphlets recovered from the possession of the applicant pertain to the year 2012-13 and have nothing to do with the date of arrest i.e. on 17.07.2019. Learned counsel has further stated that the arrest of the applicant has been falsely shown on 17.07.2019 rather he was arrested from Dolchina, P.S. Saniya, District Almora, State of Uttarakhand on 15.07.2019. The said arrest has been shown by the ATS only to show good work. It is further submitted that the applicant is an activist who raises voices of poor farmers and labourers against corruption of the Government officials. It is lastly submitted that the applicant is languishing in jail since 17.07.2019 and there is no likelihood of early disposal of the trial. The applicant undertakes that if he is released on bail, he will never misuse the liberty of bail and shall cooperate in trial. The applicant has never been involved in any kind of anti-national activities.

5. Per contra, Sri Shiv Nath Tilhari, learned A.G.A. for the State ATS has vehemently opposed the bail prayer of the applicant on the ground that the literature recovered from the possession of the applicant categorically corroborates the prosecution version. The applicant is the member of banned and declared terrorist organisation as provided in First Schedule of Unlawful Activities (Prevention) Act which finds mention at Entry No.34. There is a criminal history of five cases assigned to the applicant at the State of Uttarakhand i.e.

(i) Case Crime No.10 of 2017, u/s 10/20 of Unlawful Activities (Prevention) Act, 1967 and 3(1) of Uttarakhand Prevention of Defacement of Public Property Act, P.S. Dwarhat, District Almora;

(ii) Case Crime No.5 of 2017, u/s 10/20 of Unlawful Activities (Prevention) Act, 1967, 3(1) of Uttarakhand Prevention of

Defacement of Public Property Act and Section 127-A of Lok Pratinidhitwa Adhiniyam, P.S. Someshwar, District Almora;

(iii) Case Crime No.5 of 2017, u/s 436 IPC, 10/20 of Unlawful Activities (Prevention) Act, 1967, 3(1) of Uttarakhand Prevention of Defacement of Public Property Act and Section 127-A of Lok Pratinidhitwa Adhiniyam, Patti Sarna, Tehsil Dhari, P.S. Bhawali, District Nainital;

(iv) Case Crime No.709 of 2004, u/s 121, 121A, 124A, 120B IPC, P.S. Nankamatta, District Udham Singh Nagar; and

(v) Case Crime No.3222 of 2007, u/s 121, 121A, 124A, 120B, 153B IPC, 10/20 of Unlawful Activities (Prevention) Act, 1967 and Section 3(1) of Uttarakhand Prevention of Defacement of Public Property Act, P.S. Nankamatta, District Udham Singh Nagar.

6. Learned AGA has further submitted that in Case Crime No.709 of 2004 and Case Crime No.3222 of 2007, a reward of Rs.50,000/- has been declared by the State of Uttarakhand upon the applicant. He also contended that the said criminal history has not been explained by the applicant. The applicant is wanted in all the said cases and has not been enlarged on bail in any of them. Learned AGA has also referred various paragraphs and sentences used in the said literature recovered from the possession of the applicant which state about conducting an armed rebellion against the State. There is every likelihood that in case, the applicant is released on bail, he will again indulge in terrorist activities and misuse the liberty of bail.

CONCLUSION

7. The past criminal antecedents of the accused may not be relevant if the subject matter being adjudicated seems to be a fit case for bail but here the accused is required to explain his criminal history. The applicant is wanted in five criminal cases which includes sedition and in para-16 of the rejoinder affidavit, it has been admitted that the applicant is not on bail in any of the cases referred by the learned AGA. The Apex Court has opined in **Ash Mohammad Vs. Shiv Raj Singh**¹ that while granting bail to an accused, the court should also

¹ (2012) 9 SCC 446

take into consideration the criminal history of the accused. The criminal antecedents of an accused though always not determinative of question whether bail is to be granted or not, yet their relevance cannot be totally ignored. The same opinion has been vented by the Apex Court in **Brij Nandan Jaiswal Vs. Munna Jaiswal**² and **State of U.P. Vs. Amarmani Tripathi**³.

8. The applicant is stated to be the State Secretary of the banned organization Communist Party of India (Maoist) for the State of Uttarakhand.

9. Considering the peculiar facts and circumstances of the case and the arguments advanced by the learned counsel for the parties as also the criminal antecedents of the applicant, I do not find it a fit case for bail.

10. In view of the above, the bail application of the applicant is **rejected**.

Order Date :- 14.3.2022

Siddhant

2 AIR 2009 SC 1021

3 (2005) 8 SCC 21