

A.F.R.**Court No. - 67****Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 40580 of 2021**Applicant :-** Mohammad Azam Khan**Opposite Party :-** State Of U.P.**Counsel for Applicant :-** Mohammad Khalid, Syed Safdar Ali Kazmi**Counsel for Opposite Party :-** G.A., Prasoon Kumar, Sharad Sharma**Hon'ble Rahul Chaturvedi,J.**

1. Heard Sri Imran Ullah, assisted by Sri Mohd. Khalid, Sri Qamrul Hasan Siddiqui, Sri Safdar Ali Qazmi, learned counsel for the applicant; Sri Syed Farman Ahmad Naqvi, learned Senior Advocate assisted by Sri Syed Ahmad Faizan, Sri Zaheer Asghar, Sri Taqi Abidi, Sri Sharad Sharma and Ms. Anjum Fatima, learned counsel appearing for the informant and Sri M.C. Chaturvedi, learned Additional Advocate General, assisted by Sri Jai Narain Varshney, Sri Patanjali Mishra, Sri Abhijeet Mukherjee, learned Additional Government Advocates appearing for the State. Perused the record.

2. The pleadings have been exchanged between the parties, the matter was heard at length on previous occasion and the order was reserved to be dictated in the Chamber, meanwhile, learned A.G.A. on 28/29th April, 2022 made a mention in the Court, in the presence of learned counsel for the applicant, that on account of certain recent developments, touching the core issue, have cropped up during intervening period, and thus, requested to bring on record those fresh developments by filing a supplementary affidavit. With the consent of

learned counsels of the applicant, the matter was reopened and after the exchange of affidavits, on 5.5.2022, heard *marathon* arguments advanced to the satisfaction of counsels of both the sides and after having the written submissions from the contesting parties, judgement was reserved to be pronounced in the second week of May, 2022.

3. This bail application has been filed on behalf of Mohammad Azam Khan, the applicant after his second bail application was rejected by learned Special Judge (M.P./M.L.A.)/Additional Sessions Judge, Court No.4, Rampur vide order dated 4.8.2021.

4. The applicant Mohd. Azam Khan, who deserves no introduction, at one point of time was a political heavyweight of the then ruling party of the State of U.P., presently Member of Parliament from Rampur Loksabha constituency and Chancellor of Mohammad Ali Jauhar University (established by U.P. Act No.19 of 2006), is facing a prosecution in Case Crime No.312 of 2019, u/s 420, 467, 468, 471, 447, 201, 120-B I.P.C. and Section 3 of the Prevention of Damage to Public Property Act, 1984, Police Station-Azeem Nagar, District-Rampur. He is behind the bars in connection with aforesaid offence since 26.02.2020 and seeking bail during trial.

STORY AS NARRATED IN FIR

5. Coming to the merits of the case, which ignites from lodging of the F.I.R. by one Sri Allama Zamir Naqvi, a self proclaimed public

spirited person, by moving an application addressed to the D.G.P., Lucknow on 29.7.2019, and as such, the present F.I.R. came into existence against nine named accused persons including the applicant, his wife Tanzim Fatima and son Abdullah Azam along with six others on 19.8.2019.

6. I have keenly perused the contents of the F.I.R. and for the sake of brevity the bulky F.I.R. is reduced to following points:

(a) The land in dispute relates to one Mr. Imamuddin Quereshi s/o late Badruddeen Qureshi, permanent resident of Lucknow. This gentleman belonged to 'Sunni Sect' of Muslim religion (Backward Class), Kasai/Qureshi community, who after the partition, relinquished the citizenship of India and migrated to Pakistan during 1947-49 and since then turned a citizen of Pakistan. As per the provisions of Section -8 of "The Administration of Evacuee Property Act, 1950" the property left by Imamuddin Qureshi was declared as Evacuee Property and deemed to have been vested with the 'Custodian' of the State, as per legal implication.

(b) The property left by Imamuddin Qureshi contains one room and an *Imambara* situated at Village -Singhan Khera, Pargana and Tehsil Sadar, Rampur, having *pucca Raqba* 86 *beegha*, 2 *biswa* and as per notification issued by the Government of India 1962 and 1971, in all 45 *gatas*, ad-measuring area 13.842 hectares of agricultural land

got endorsed and vested with the government, as per Section 5 of Enemy Property Act, 1968.

(c) In fact, this landed property ad-measuring area 13.842 hectares situated at Village Singhan Khera, Pargana and Tehsil Sadar, District Rampur is the focal issue of the entire controversy of the present bail application.

(d) It is further alleged in the F.I.R. that despite of the fact that the aforesaid property in dispute i.e. 13.842 hectares is under the custody of Custodian, Enemy Property, Ministry of Home, Government of India. The applicant belonging to the City of Rampur and pursuing his dream project “Mohammad Ali Jauhar University” have an evil eye over the land in dispute and in order to digest a valuable piece of land without paying any sale consideration or any authority or title recognized under the law, won over the then Chairman, Sri Syed Waseem Rizvi who was at the relevant time adorning the chair of U.P. Shia Central Waqf Board. Not only Mr. Syed Waseem Rizvi, but rest of the Board of members, namely Mazhar Ali Khan @ Bhukkal Nawab of Lucknow and other members and Inspector, have fabricated certain forged papers and documents. These members and other office bearers of Shia Central Waqf Board virtually started dancing on the tune of their political boss the Applicant and the Chairman. After hatching a conspiracy, making those forged and crafted documents have used them as a genuine one, got the aforesaid land belonging to

person of Sunni Sect of Kasai community, showing him as a permanent resident of Asharfabad Deen Dayal Road, Kotwali Saadatganj, Lucknow got the property in question converted into a 'Waqf Property' by preparing a forged Waqf Deed, whose alleged settler was late Imamuddin Qureshi. Interestingly a person who has already migrated to Pakistan in 1947-1949, his alleged Waqf was got registered as 'I-78' at U.P. Shia Central Waqf Board, Lucknow in 2003. This by itself *per se* throws ample light on the modus operandi of applicant, who was the then Cabinet Minister and his close friend Syed Waseem Rizvi. Alleged waqf deed is nothing but a tissue of utter falsehood, a tailored document with ulterior motive and purpose just to digest that 13.842 hectares of the land left by Imamuddin Qureshi during partition days. This land was eventually encircled within the University premises, without paying single penny as its consideration or without any authority or title over the land in question.

(e) It is further alleged in the F.I.R., that when in the year 1942 U.P. Shia Central Waqf Board and Sunni Central Waqf Board were established, all waqf properties in the State were measured and identified on a district level. In this regard it was alleged, that during that period Imamuddin Qureshi Trust was registered or not, is a pivotal question? who was its Mutwalli since its establishment? Without having any certificate applied it seems that Mohd. Azam

Khan misusing his powers as Cabinet Minister along with his close ally Sri Syed Wazim Rizvi without having any inquiry managed to get said Waqf Deed of Imamuddin Qureshi registered by the then Administrative officer of Shia Central Waqf Board, Sri Syed Gulamus Syedden, in furtherance of common intention of all. The alleged legal formalities are simply eye-wash or a hoax after grossly misusing applicant's power and position at relevant time.

(f) It is also alleged in paragraph-5 of the F.I.R. that as to who are the decedents of alleged settler Imamuddin Qureshi and whether they are residing in Lucknow or Rampur or all of them have migrated to Pakistan are not known, because as mentioned above Imamuddin belonged to Sunni Sec and as to how his trust/waqf property was registered as Shia Waqf Board. By way of repetition it has been alleged that the applicant Mohd. Azam Khan after conniving with the then Chairman, Shia Central Waqf Board Mr. Syed Waseem Rizvi and other Members of Board have swindled the property in question just to benefit Azam Khan's dream project 'Mohammad Ali Jauhar University' without any sale consideration or passing any title over the land. By this action the applicant and other co-accused have caused a consideration financial dent to the Government of U.P. as well as Government of India in an organized way.

(g) Interestingly almost after 12 years of its alleged registration with U.P. Shia Central Waqf Board on 2.4.2015 one Masood Khan was

appointed as its *Mutwalli* in a slip short way. It is alleged that Mutwalli Masood Khan was appointed its Mutwalli after 12 years of its registration, is a puppet as 'Yes Man' of the applicant. He requested the District Magistrate, Rampur to hand over the aforesaid property as a waqf property. In response to the same, A.D.M., Rampur vide its letter dated 15.4.2015 informed that the land in question ad-measuring 13.842 hectares is an Enemy Property and would remain till such time the Government of India does not release it.

(h) In this long F.I.R. a direct allegation has been made against the applicant for misusing his power as a Cabinet Minister and hushing up the landed property belonging to the Custodian, Evacuee Property, Mumbai, who migrated to Pakistan during partition. In the Revenue Records of 1359 Fasli there is a clear endorsement that land belongs to Imamuddin Qureshi managed by the 'Custodian'. Thus right from the day of partition the land is named in the custody of Custodian, Evacuee Property, Mumbai.

(i) After receiving this complaint, the Central Waqf Council Government of India, New Delhi has constituted a nine members team, headed by Dr. Syed Aizaz Naqvi, Advocate, Supreme Court Delhi, who had given a detailed inquiry report on 6.1.2017, and thus, it was prayed that 45 *gatas* of land belonging to Imamuddin Qureshi, who left Pakistan and accepted the citizenship of that nation, ad-

measuring area 13.842 hectares of village Singhan Khera, Pargana Tehsil Rampur it has been declared as 'Enemy Property' after fabricating documents in a forged way with intention to cheat and play fraud, causing a huge loss to the Government of U.P. as well as Government of India. It is Mohd. Azam Khan, his wife Tanzim Fatima, his son Abdulla Azam, his friend Syed Waseem Rizvi and others who after concealing the material facts and forging the documents have succeeded to encircle the aforesaid land in dispute within the campus of Mohammad Ali Jauhar Ali University (hereinafter referred to as 'University').

Hence this F.I.R. relying upon the report given by the Probe Committee.

7. **Thus, for the purpose of present bail application the focal issue of the land is total 45 gatas ad-measuring 13.842 hectares of land situated at Village- Singhan Khera, Pargana and Tehsil Sadar, District Rampur, which has been declared as Enemy Property swindled by Mohd. Azam Khan, the then Cabinet Minister of Govt. of U.P. later on become Chancellor of the University named above.**

SUBMISSIONS ADVANCED BY LEARNED COUNSEL FOR THE APPLICANT

8. Sri Imran Ullah, learned Advocate appearing for the applicant

raised his submissions touching the various issues, which for the sake of convenience are being formulated herein below :

(i) The applicant has fully cooperated with the investigation, never misused or terrorized any of the witnesses, in which after investigation the police submitted a report u/s 173(2) Cr.P.C. on 27.5.2020. It is contended that the trial has yet not been commenced, thus, now no useful purpose would be served to keep the applicant behind the bars during trial. He is already facing incarceration since 26.2.2020.

(ii) After change in the establishment in the State of U.P. in the year 2017 in the State of U.P., there is volley of criminal cases, one after the other within a span of 2-3 months. Out of 89 cases lodged against the applicant, he has attained bail in 88 cases and thus, present is only case left for the consideration of this Court.

(iii) Since the applicant is languishing in jail since 26.2.2020 and as per the ratio laid down by Hon'ble Apex Court in the case of **Satendra Kumar Antil vs C.B.I. reported in 2021 SCC Online SC 922** the applicant deserves to be bailed out in the present case too.

(iv) It is next contended by learned counsel for the applicant that the applicant is a person of 72 years of age, though powerful and influential political giant of the State of U.P., is in jail for almost two and half years. Last year during Covid pandemic he was nearly saved

on account of Providence. He was severely fallen sick, his cardiac and renal organs were severely adversely affected and he is still on medication. It would be indeed cruel and inhuman if he would die in harness without any proper treatment.

(v) It is further contended by Sri Imran Ullah, that no doubt the applicant was a Cabinet Minister twice in the Government of Uttar Pradesh, first in 2003 and thereafter in 2012. On both occasions, the applicant was second in command of the Ministry, a virtual political giant. As soon as he came into power on both the occasions, without wasting much of the time after exploiting his position as a Cabinet Minister, managed to get the alleged Imamuddin Trust registered, and thereafter, managed to get the land in question leased out to the University on 31.5.2007, but soon after change in the Government of State of U.P., the said lease deed was cancelled by the same authority on 26.6.2007. As mentioned above, the foundation stone was laid in the year 2005 and the University became a legal entity after establishing the U.P. Act No.19 of 2006. The said Act was passed by the Assembly of the State of U.P. The applicant Mohd. Azam Khan being the perpetual Trustee of Maulana Mohd. Ali Jauhar Trust was declared as a Chancellor of the University for all times to come. This, in fact, the University was his fiefdom of the applicant.

(vi) It is contended by learned counsel Sri Imran Ullah that the applicant has worked for the University constantly, relentlessly for the

betterment and upliftment of the citizen, specially the youth of Rohilkhand area. Being a social activist and educationalist he was deeply concerned about the social as well as social upliftment of his area and believes that widespread education is the only way to enlightening masses. He plays the major role for the socio-economic development of the weaker and underprivileged classe in that area. It is further argued that the applicant has dedicated his entire career for the promotion of education in the State of U.P., especially the Districts of Rohilkhand area.

(vii) Learned counsel for applicant fairly conceded that there is no genuine document or any deed with the University/Trust, establishing its good title over the property in dispute i.e. 13.842 hectares village Singhan Khera, Sadar, Rampur. On making query by the Court, as to how and under what circumstances the property in question was encircled within the University premises, Sri Imran Ullah fairly conceded that since the adjacent properties were purchased by the University/Trust, and thus this is the only reason for encircling the Enemy Property within the University campus without any authority of land or good title over the land in question.

This, in fact is startling revelation, whereby it has been conceded by the counsel that in no uncertain terms the modus operandi of 'encircling the Enemy Property' in most abnormal and surreptitious way. This in fact a new jurisprudence by which a

disputed landed property could be grabbed, without even semblance of good title.

9. In addition to this, in his rejoinder affidavit, during argument, Sri Imran Ullah, learned counsel for the applicant, categorically submitted that “the land in dispute is still lying idle and vacant, though within the boundaries of aforesaid University and not a single brick has been kept over it.” In this regard para-8 of the rejoinder affidavit is quoted herein below :

“8.Moreover the land in question is still lying as it is, with absolutely no construction/hindrance/obstacle on the same. However, as per the report of District Magistrate dated 4.9.2017 as well as the site plan also on the land in question no construction has been raised. It has wrongly been alleged that the same is encroached through boundary wall, which is evident from the perusal of the bird’s eye view as contained in Google Map, annexed along with bail application as annexure no.28. It may be pointed out that merely by purchasing the land adjacent and around the land in question, it cannot be said that the University/Trust has been encroached upon the said land. There is also a road adjacent to the land in question (Enemy Property) by which the same can be access. It is only for the reasons, best known to the authority concerned, the same has not been used till date by the Administration. Further it is wrongly stated in para under reply that applicant appointed Masood Khan as Mutawalli of the trust Imamuddin, it is specifically mentioned at this stage that applicant has nothing to do with the trust Imamuddin or its mutwalli Masood Khan, neither at any point of time was having any power or control over the trust Imamuddin, hence no question was arise with the appointment of any mutawalli of the said trust.”

Similarly, in the written argument submitted on behalf of applicant, there is identical reiteration of the aforesaid fact in para s 24 & 25, which are being reproduced thus :

“24. On 13.5.2020 the Investigating Officer visited the alleged

*site and prepared **Site map** which is contained in parcha No.33 of the case diary (RA-1 Page 42 of Rejoinder Affidavit) It shows the land in dispute is surrounded by the University land but there is an approach two way road which can be used to access the alleged land in dispute. The land in dispute I.e the land which has been declared as Enemy Property in the year 2006 and has been given to the custody of District Magistrate, Rampur is still lying as it is with absolutely no construction/hindrance/obstacle on the same though surrounded by the land of university from three sides. However, as per the report of District Magistrate dated 4.9.2017 as well as the site plan also on the land in question no construction has been raised, though in the year 2007 when a demand was made to give the property in question to the University/Trust, the Trust intended that in case, the said land will be given to the University, the same will be changed into a play ground. As per the allegation of the Investigating Officer, the entire disputed land is surrounded by the land purchased by the Trust/University. It has wrongly been alleged that the same is encroached through boundary wall the land in question is clear from all hindrance, obstacle, and construction till date. As evident from google map (page 440) further as evident from the site plan itself, the approach road to the land in dispute is also through the road which is being used for going towards University. Not only this, there is another road from behind which can be used as approach road of the aforesaid disputed property and as such it is wrongly being alleged that the land is being encroached by the University.*

25. That in case the land is declared to be enemy land in future the same can be taken possession by the custodian any time as the same is still lying vacant without any hindrance having approach road from two sides.”

10. On a conjoint reading of the contents of paragraph mentioned above, which is reproduction from the affidavit on behalf of applicant, the Court has gathered an impression that the land in question is lying vacant, though within the University campus and not even single brick is kept over the land in dispute, then the question arises as to how and under whose authority or title the land in dispute has been encircled within the boundaries of University. Interestingly

in Para-25, it has been mentioned that in the event the land in question to be Enemy land in future, the same can be taken possession by the Custodian any time as the same is still lying vacant without any hindrance or having approach road from two sides. Indeed, this is the novel and crooked way of usurping the property from the days of partition. It is the custodian who is having right, title over the property in question. The applicant, being a Chancellor of the University, is a rank trespasser, without any authority of law or license encircled the property in question within the University campus and there seems that now the applicant is “obliging” the government of India/the Administration/Custodian of Evacuee Property, Mumbai to approach the court concerned and get a decree of eviction, then only University would release the property. It is simply amusing whereby rank trespasser, a usurper is justifying its possession over the land in dispute. This is no justification to encircle 13 hectares and odd land in dispute, within the boundaries of the University. Moreover, it has been mentioned that there is proper access to the land given by the University. This is unheard of a novel way of justifying the possession over the property for which neither the Chancellor nor the University has ever authority to encircle the same.

11. From the above averments, it seems that the applicant now wants to distance and disassociate himself in his personal capacity

as well as the Chancellor of University over that land in question as well as Imamuddin Qureshi Trust. Under the circumstances, and relying upon his own averment/submissions, let the land in dispute be reverted to the Administrator, Evacuee Property or the District Magistrate, Rampur, being its representative.

12. The applicant in some way or the other, is trying to impress upon the Court that he is doing a pious duty to educate the youth by raising the University but while going through the entire case, this Court is puzzled to seek pious objective and motto to raise any educational institution and that too a dream University in the name of one of our ancestors, Mohammad Ali Jauhar University, in a trading smug manner.

13. Thus, if taking the above averments, submissions and the pleadings of the affidavits, it is well established that the applicant Mohd. Azam Khan was out and out for anyhow grab the property which is already earmarked as Enemy Property by exploiting his position as a Cabinet Minister. He has not having any semblance of any document which could even indicate a good title over the property in question. It is simply amusing and surprising that a Cabinet Minister is stooping down to take away the Enemy Property by applying all foul means and tricks and now trying to delink and disassociate himself from the property in dispute for the reason best known to him.

From the aforesaid fact it is clear, that in order to achieve and thrive his dream project shook his hands with Sri Syed Waseem Rizvi, who has manufactured a sham and a parallel claim by Imamuddin Qureshi Waqf allegedly registered as Shia Central Waqf Board in the year 2003.

SUBMISSIONS ADVANCED BY LEARNED COUNSEL FOR THE STATE

14. Per contra, Sri M.C. Chaturvedi, learned Additional Advocate General for the State and Sri Farman Ali Naqvi, learned Senior Advocate have spearheaded the submissions for the State of U.P. as well as for the informant. At the outset, attention of the Court has been drawn to the Section 36 and 37 of The Waqf Act, 1995 (Chapter -V), Registration of [AUQAF], which is quoted herein below :

“36. Registration.—

(1) Every [waqf], whether created before or after the commencement of this Act, shall be registered at the office of the Board.

(2) Application for registration shall be made by the mutawalli:

Provided that such applications may be [made by the wakf] or his descendants or a beneficiary of the [waqf] or any Muslim belonging to the sect to which the [waqf] belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain following particulars:—

(a) a description of the [waqf] properties sufficient for the identification thereof;

(b) the gross annual income from such properties;

(c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the [waqf] properties;

(d) an estimate of the expenses annually incurred in the realisation of the income of the [waqf] properties;

(e) the amount set apart under the [waqf] for—

(i) the salary of the mutawalli and allowances to the individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars provided by the Board by regulations.

(4) Every such application shall be accompanied by a copy of the [waqf] deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the [waqf].

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(7) On receipt of an application for registration, the Board may, before the registration of the [waqf] make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the [waqf] property, the Board shall, before registering the [waqf], give notice of the application to the person administering the [waqf] property and shall hear him if he desires to be heard.

(8) In the case of [auqaf] created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of [auqaf] created after such commencement, within three months from the date of the creation of the [waqf]:

Provided that where there is no board at the time of creation of a [waqf], such application will be made within three months from the date of establishment of the Board.

37. Register of [auqaf].—*The Board shall maintain a register of [auqaf] which shall contain in respect of each [waqf] copies of the [waqf] deeds, when available and the following particulars, namely:—*

(a) the class of the [waqf];

(b) the name of the mutawalli;

(c) the rule of succession to the office of mutawalli under the [waqf] deed or by custom or by usage;

(d) particulars of all [waqf] properties and all title deeds and documents relating thereto;

(e) particulars of the scheme of administration and the scheme of expenditure at the time of registration;

(f) such other particulars as may be provided by regulations.

(2) The Board shall forward the details of the properties entered in the register of auqaf to the concerned land record office having jurisdiction of the waqf property.]

[(3) On receipt of the details as mentioned in sub-section (2), the land record office shall, according to established procedure, either make necessary entries in the land record or communicate, within a period of six months from the date of registration of waqf property under section 36, its objections to the Board.]

15. Sri Chaturvedi, learned Additional Advocate General at the outset has drawn attention of the Court to the Proviso to Section 36(2) of the Waqf Act by making a mention that the registration shall be made by mutwalli provided that such application may be made by the waqf board or his descendants or a beneficiary of the waqf or any Muslim belonging to the 'SECT' to which waqf belongs. Thus, it has been argued that the property once owned by Imamuddin Qureshi admittedly a person belonging to 'Sunni Sect' of the Muslims community, now, it is the applicant who has to explain as to how and under what circumstances he managed to get the same registered in U.P. Shia Central Waqf Board, when its alleged settler was Sunni.

16. It is canvassed by learned Additional Advocate General that the original waqf deed by the alleged settler of Imamuddin Qureshi was never made available while making its registration which is mandatory. It is further contended that as mentioned above that for registration of document has to be routed through by the mutwalli of the Waqf. The mutwalli 'Masood Khan' of this Waqf was appointed

on 20.3.2015. Thus, this is an apparent anomaly, wherein a mutwalli is being appointed in the year 2015 and the aforesaid waqf has already been registered in the year 2003. In addition to this it is argued that the creation of waqf and the migration of its Waqif of that Waqf in question to Pakistan, does not grant any right to anyone to usurp the waqf property or for that matter of fact, an enemy property. Said action with regard to either status of waqf or the status of evacuee property has to be decided by the authorities concerned of the respective departments in accordance with law and no other person whosoever the higher authority may be utilize or use his position to manipulate government record. It is urged that the person of a rank of Cabinet Minister of the Govt. of U.P. i.e. the applicant, has got a greater responsibility to act in a more sensible, responsible and diligent way, which is not expected from a person of his stature. It is just for his personal gain to fulfill his dream in the shape of University. Moreover, taking to be true on the face value, that the waqf was created in 1943 remained abandoned upto 2003, that is to say about 70 years, and all of a sudden a rank stranger Masood Khan, stooge of the applicant, sought appointment as mutwalli, woke up from slumber and got the appointment on the basis of an application dated 16.3.2015. The appointment of mutwalli in the year 2015 is simply an eye-wash and just within one day without holding any inquiry about him he was appointed as mutwalli just to serve the aim

and objective of his master i.e. Mohd. Azam Khan, a cabinet minister.

17. It is further submitted by learned counsel for the State that as per revenue record of 1359 Fasli is shown as a land in dispute in the name of “Waqif Imamuddin Qureshi” with a remark that the land in dispute is under the management of “Custodian” and since then the status of property in question remained as such.

18. Sri S.F.A. Naqvi, learned counsel further pointed certain glaring abnormalities which touches the core issue that, when the waqf property has been declared as a evacuee property then aforesaid correspondences were made to the competent authorities to bring disputed plots within the area of so called Waqf of Imamuddin Qureshi. All the issues raised by Sri Naqvi has already been pointed out by Sri MC Chaturvedi, learned AAG and it would be simply reiteration of the arguments.

19. All the acts, referred to above, were maneuvered and conducted in a well planned and settled way, just to grab the disputed property by creating a ‘sham and parallel dispute’ regarding the title and ownership of the Enemy property left by Imamuddin Qureshi from the year 2003 itself. Audacity of the officers, who were dancing to the tunes of the then Cabinet Minister Mohammad Azam Khan, started playing unnaturally by appointing a *Mutwalli* of the Waqf in question

vide its resolution dated 17.3.2015. Even in the year 2015, again a representation was made by the *Mutwalli* before the District Magistrate/Additional Survey Commissioner of Waqf, Rampur for carrying out necessary correction in the name of Waqf in the relevant revenue record. In response to the same, the Additional District Magistrate/Additional Survey Commissioner Waqf, Rampur vide letter dated 15.4.2015 informed that the property in dispute, measuring 13.842 hectares and 2 biswas, has been declared as 'enemy property' vide notification dated 18.7.2006, out of which 9.111 hectares of the land has been leased out to the Border Security Force, remaining land has been recorded as Chak Road Naveen Parti and in the name of other persons. Thus the land in issue, for the purposes of this bail application, is land admeasuring area 13.842 hectare over Gata No.45 surrounded by University from three sides and there is approach road for the fourth side at village Singhan Khera.

20. After miserably failing to establish any good title or its genuine source over the property in dispute i.e. 13.842 hectares Village Singhan Khera, Sadar, Rampur, as a last resort, learned counsel for the applicant has floated a legal fantasy in order to snatch the property and staking claim over the said land by a legal fantasy and fiction by making a mention that the property surrendered in the name of religion "ONCE A WAQF PROPERTY IS ALWAYS A WAQF PROPERTY" as an ultimate weapon. It has been mentioned that way

back in the year 1943 when the settler has himself created Imamuddin Waqf toads the said property since then the said property belongs to Almighty “Allah” and thus it cannot be declared as Enemy Property, despite of the fact that its waqif/settler has already been migrated to Pakistan and relinquished the citizenship of India.

21. It is further alleged that the applicant cleverly tailored a sham and a parallel claim against custodian of Enemy Property left by ex-citizen of India who migrated to Pakistan. Of late, getting the said Imamuddin Qureshi Waqf registered under U.P. Shia Central Waqf Board over the land in question the applicant Azam Khan, at a relevant point of time i.e. 2003, crookedly and deceitfully, created a parallel religious body in the name of Imamuddin Qureshi Waqf in connivance of the said Syed Waseem Rizvi, to stake claim over the property in question vis-a-vis Administrator, Enemy Property, Mumbai, who was managing the same and finds place its name since the days of partition. This is a naked attempt of misusing the power and his position by the applicant as a cabinet minister who wants that let these bodies may fight for their respective claim over the property in dispute and taking the advantage of their “shadow fighting” he would enjoy the land in question, without any authority of law.

At this juncture, Sri S.F.A. Naqvi, learned counsel has

advanced his submission by making a mention that applicant was working in twin capacity, as a Chancellor of the University as well as a Cabinet Minister of the State Government. There is clear cut case of 'conflict of interest' whereby in order to fulfill his dream project he has compromised his position as a Cabinet Minister and now is distancing and disassociating himself from the land in question as well as from the Imamuddin Qureshi Waqf as well as its registration process.

22. As mentioned above, Sri Imran Ullah in no uncertain terms has admitted the very fact that Maulana Ali Jauhar Trust or the University has got no title even for the namesake over the property in dispute. He admits that the University as well as Trust without any title or authority but by virtue of fact that the University has purchased the adjacent lands, unauthorizedly encircled its right over the property in dispute. Neither any authority nor the custodian of the enemy property has ever allotted any property in question in favour of University except in the year 2006, a lease was granted, though within a month of its issuance, withdrawn by the custodian/administrator. As mentioned above this is a novel way to trespass/usurp the land and use it for the purposes of University.

23. This Court is delighted to refer that the consensus of the

Muslims, Allaah says (interpretation of the meaning) that *Ghasb* (to seize something wrongfully) is *Haraam*, and according to *Fiqh* terminology, taking the property of others wrongfully, is *Haraam*.

Furthermore, the Prophet (peace and blessings of Allaah be upon him) said: “Whoever seizes a handspan of land unlawfully, will surround him to the depth of seven earths.”

Therefore, the perception that “*once waqf property is always waqf property, it vests in Almighty and the same cannot be declared as enemy property, merely on the ground that Waqif/settler has migrated to Pakistan after partition*”, is completely misconceived according to the Muslim dogma itself.

24. Interestingly, in paragraph 29 of the affidavit of bail application the applicant Mohammad Azam Khan has contended that Mohammad Ali Jauhar University, at no point of time, has got any concern with regard to alleged dispute regarding title over the land in dispute between the Shia Central Waqf Board on one hand and the Custodian of the Enemy Property on the other hand. An automatic question cropped up to be answered by the applicant, as to who is the *Mutwalli* of the Trust and when he was appointed? From where and which source the applicant is staking his claim over the disputed property? It is also true that the legality, veracity, validity and the authenticity of the said trust i.e. Trust Imamuddin, which was allegedly registered

with U.P. Shia Central Waqf Board in the year 2003 has not been unseated by any Court of law. Playing on the anomalous situation, the applicant being main author of the said University, encircled the property-in-question, in the University campus. Maulana Ali Jauhar Trust/University has to explain the source and their good title of the land from which they acquired and encircled it within the precinct of the University?

25. In paragraph 37 of the affidavit of bail application, it has been mentioned that the Waqf deed dated 23.8.1943 as well as the entries made in the Waqf Board's register, still hold good and has not been challenged before any of the competent authority/court of law/tribunal, neither the same has been declared as null and void till date. There is no order of any Tribunal/Court of competent authority whereby the Waqf deed dated 23.8.1943 has been termed as forged or invalid or void document. It is alleged that during the investigation, the authenticity, veracity and validity of the said deed was questioned and unanimously has been declared as a forged document. There is no handwriting expert opinion before any court of law/competent authority/tribunal by which the aforesaid Waqf deed as well as the entries made in the Waqf Board register in the year 2003, was declared as forged and fabricated.

26. On that other hand, it has been contended by learned counsel for the applicant that apart from these factual issues, the applicant is a

septuagenarian, suffering from various old age related serious ailments, was recently critically ill and was admitted in a hospital, who anyhow could save his life, but still in a pathetic health condition. He is a law abiding citizen and has been targeted by different rival political parties, the sky has fallen on him on account of political vendetta.

27. Per contra, Sri Syed Farman Ahmad Naqvi, learned Senior Advocate and other counsels appearing for opposite parties have filed their respective written arguments, by which they have refuted the submissions advanced by the defence tooth and nail by hammering the authenticity and legality of alleged Waqf Deed constituted by Imamuddin Qureshi. In para-4 of the counter affidavit filed by Devendra Kumar, S.I., P.S.-Azeemnagar, District -Rampur, it is mentioned that vide notification No.12/02/65 dated 18.12.1977 SO No. 5511 and in the revenue record, name of Imamuddin Qureshi was recorded with possession as custodian since 1359 *Fasli*. It is alleged that the applicants named above, for the purposes of attaining their objective and fulfill their dream project “Mohammad Ali Jauhar University” with only design to usurp the landed property ad-measuring area 13.842 hectare over 45 *Gata*. Mohd. Azam Khan, the applicant was having an evil eye over this land from very inception and he wanted to grab the property by any means, by hook or crook. In order to achieve his target and to oblige the applicant who at the

relevant point of time was powerful Minister of Urban Planning & Development, has colluded with Mr. Syed Wasim Rizvi, the then Chairman of Shia Central Waqf Board. The applicant and Sri Syed Wasim Rizvi exerted pressure upon the concerned officials/officers after getting a green signal from the higher ministry and the Chairman of Waqf Board, the junior officers started dancing to their tunes. It has been argued by Sri Syed Farman Ahmad Naqvi, learned Senior Counsel that it was an intentional creation of a dispute of title of the land in dispute by Shia Central Waqf Board by creating a parallel claim over the land. Admittedly after the enactment of Evacuee Property Act, 1950, the property left by a Muslim gentleman, who surrenders the citizenship of India and migrated to Pakistan, his property by legal implication would be turned into Enemy/Evacuee Property and the same is being administered by the provisions of the Administration of Evacuee Property Act, 1950. Learned Senior Counsel in no uncertain terms, in his submissions, has blasted the very genesis of alleged Waqf Deed of Imamuddin Qureshi settled by him in 1943, over which the entire castle of argument was raised by Sri Imran Ullah, learned counsel for the applicant, who tried to justify the alleged possession of the landed property in dispute by the applicant. In paras 5, 6 and 7 of the counter affidavit filed on behalf of State, it has been mentioned that the alleged 'Waqf Deed' of 1943, whose settler was Mr. Imamuddin Qureshi dated 23.6.1943, the

address is shown as “Imamuddin Qureshi son of Badrauddin, Sakin Asharfabad Deendayal Road, Lucknow”. It was pointed out that at that relevant point of time i.e. in year 1943 there was no road in existence, namely, ‘Deen Dayal Road, Lucknow’ and on this it was indicated by learned counsel for the opposite party, that this itself clearly indicates that the deed-in-question is, *per se*, a tissue of utter falsehood, a frivolous document and forgery committed on the record. In addition to this, number of other falsity over the alleged deed were pointed out. The Court does not wish to express its opinion about the authenticity and legality of above deed in question either ways at this juncture of adjudicating the bail application.

28. In para-15 of the counter affidavit it has been mentioned that the applicant was bent upon to fulfill his dream project in the name and style of “Mohammad Ali Jauhar University” made all efforts to illegally use of ‘Enemy Property’ of *Gata* No.45 having area 13.842 hectare, just to extend the boundary of Jauhar University with the help of the Shia Central Waqf Board, Lucknow and with their collusion the Photostat of the forged document of Waqf Deed of 1943 and got it registered without producing its original record, and thereafter, exerting his influence he got appointed his close associate, Masood Khan as a *Mutwalli* of aforesaid Waqfs. Sri Syed Farman Ahmad Naqvi, learned counsel for opposite party strenuously argued that this is a naked and blanket effort of misuse of power and position

just to create an unwarranted controversy by inserting and branding the land in dispute Gata No.45 having total area 13.842 hectare as a Waqf property. For this, as mentioned above, it was argued that the applicant cleverly used the old dictum of Muslim Personal Law “*once a property of Waqf, is always the property of Waqf*”. It is further contended by learned Senior Counsel that creation of this Waqf and its registration is nothing a camouflage and hoaks by the applicant, just to create a parallel claim with regard to an ‘Enemy Property’ and thereafter snatched the property for its own purpose.

29. Interestingly, it is also evident that after creating this parallel claim or rather disputing the title over the property. Till date the ownership and the title over the property has not been judicially acknowledged by any competent court of law. Taking advantage of this void, there rises a million dollar question as to who and under what circumstances the property in question was encircled within the boundary of Mohammad Ali Jauhar University.

LEGAL DISCUSSION

30. After hearing the rival submissions at length to the satisfaction of respective counsels, the Court has to adjudicate the allegations and the material collected during investigation to substantiate those allegations and the defence.

31. Sri M.C. Chaturvedi, learned AAG has relied upon the

judgement of Hon'ble Apex Court in the case of **Naveen Singh vs State of U.P. 2021 6 SCC 191.**

“12.3. However, the High Court has not at all considered that the accused is charged for the offences under Sections 420, 467, 468, 471, 120B IPC and the maximum punishment for offence under Section 467IPC is 10 years and fine/imprisonment for life and even for the offence under Section 471 IPC the similar punishment. Apart from that forging and/or manipulating the court record and getting benefit of such forged/manipulated court record is a very serious offence. If the Court record is manipulated and/or forged, it will hamper the administration of justice. Forging/manipulating the Court record and taking the benefit of the same stands on altogether a different footing than forging/manipulating other documents between two individuals. Therefore, the High Court ought to have been more cautious/serious in granting the bail to a person who is alleged to have forged/manipulated the court record and taken the benefit of such manipulated and forged court record more particularly when he has been chargesheeted having found prima facie case and the charge has been framed.”

32. Deriving the strength from aforesaid judgment of Hon'ble Apex Court, it is urged by learned A.A.G. that forging and manipulating the court record and getting the benefit of such forged/manipulated record is a very serious offence and it will hamper the administration of justice and it was urged that High Court has been more conscious while granting bail to a person who has forged document and has churned the benefits out of those forged and manipulated document.

33. In reply to it, Sri Imran Ullah learned counsel for the applicant upon taking into various factors such as seriousness of offence, the character of the evidence, the circumstances which are the peculiar to the accused, reasonable apprehension of witnesses being tampered

with, larger interest of the public or the State and similar other factors. It is the solemn duty of the Court to decide the bail applicant by a reasoned order, based on bonafides of the applicant in the light of prevailing facts and circumstances. In this regard the Hon'ble Apex Court has pronounced catena of judgments and to start with, *State of Maharashtra vs. Sitaram Popat Vital, AIR 2004 SC 4258; Ram Govind Upadhyay vs. Sudarshan Singh and Ors, AIR 2002 SC 1475; Prahalad Singh Bhati vs. N.C.T. Delhi and Ors, AIR 2001 SC 1444;* deserve special attention while deciding the present bail application. Cumulatively, if the applicant is being given liberty the factors which are to be taken into consideration while considering and deciding bail application are :

- (i) *The nature of accusation and severity of punishment in case of convictin and the nature of supporting evidence,*
- (ii) *Reasonable apprehension of tempering of the witness or apprehension of threat to the complainant,*
- (iv) *Prima facie satisfaction of the Court in support of charge,*
- (v) *Court has to take into account whether there is or is not a reasonable ground for believing that the applicant has committed the offence alleged against him,*
- (vi) *Character, means, standing and status of applicant,*
- (vii) *The likelihood of the offence being continued or repeated on the assumption that the accused is a guilty of having committed the offence in past.*

34. In the recent judgment of Hon'ble Apex Court in the case of ***Sanjay Chandra vs Central Bureau of Investigation (2012) 1 SCC 49***, has held :

“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 can be 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. 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 un-convicted 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. Apart from the question of prevention being the object of a 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 un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”

In ***Manoranjana Sinh Alias Gupta vs CBI, 2017 (5) SCC 218***, the Hon'ble Apex Court has held as under :

“This Court in [Sanjay Chandra vs. Central Bureau of Investigation \(2012\) 1 SCC 40](#), also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that 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 found guilty. It was underlined that the object of bail is neither punitive nor preventive. This Court sounded a caveat 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 a conduct whether an 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. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was

not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted.”

The Hon’ble Apex Court in ***Prashanta Kumar Sarkar v. Ashis Chatterjee and another (2010) 14 SCC 496*** has laid down the following principles to be kept in mind while deciding bail applications :

- (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.”*

35. Now commensurating with the guidelines as settled by the Hon’ble Supreme Court, no doubt that applicant at the relevant point of time was a powerful minister and an uncrowned monarch of the State of Uttar Pradesh during the past regime. He was enjoying number two position in the State hierarchy after the Chief Minister. It is canvassed by the learned counsel that after change of establishment in the State of U.P. in the year 2017 on account of political vendetta, volley of criminal cases of different varieties have been pasted against him.

36. The applicant is an old man of 72 years, a senior citizen, suffering from number of age related ailments; like hyper tension and

other severe problems. The Court is aware that recently in Covid pandemic he remained in the hospital for almost a month and his kidneys and other vital organs were got adversely affected. Charge sheet has already been submitted in the matter and it is also given to understand that in most of the cases in which the prosecution were initiated against him, he has been bailed out.

37. The Court is failing to express its view that the applicant is somewhere or the other is trying to impress upon the court that he has left no stone unturned in establishing an University to spread the quality education among the youth in the state of Uttar Pradesh especially Rohilkhand area. No doubt, the object is laudable one but it is expected from a minister who claims himself to be a visionary while establishing the University, but while going through the entire case, the Court is at loss, puzzled and wonder that to thrive his dream project in the name of Mohammad Ali Jauhar University the applicant is trading in a smug manner. It is not only the object which has to be pious one but its means, ways and paths too should be aboveboard and transparent. If a person of a cabinet minister uses a guileful practice or does any act in a slip short and shabby way or connive with deceitful means, then it erodes the confidence of public and the very pious object of the said dream project got spoiled and vitiated.

38. While surfing the motto to raise any educational University, this Court visited Winston Churchill's opinion, which refers as under:

“The first duty of a University is to teach wisdom, not trade, character, not technicalities”

Herein, there seems that the applicant in disguise of raising University is trading and usurping technicalities to grab an evacuee property by oblique means.

Our father of the nation, Mahatma Gandhi, also categorically stated in strong words about achieving higher goals adopting reprehensible means that “I will not let anyone walk through my mind with their dirty feet.”

The applicant to grab the land unlawfully has ashramite himself under the umbrella of religion, wherein he pleads that ‘the Waqf property is the property of Almighty’.

Whereas according to the great thinker and philosopher *Seneca* **“Religion is regarded by the common people as true, by the wise as false, and by rulers as useful.”**

The applicant, intoxicated on the throne of the power and position misused his authority in a most indecent manner, that’s why it is said that” “If absolute power corrupts absolutely, where does that leave God?”

39. There is yet another aspect of the issue i.e. an old saying “power corrupts a man and absolute power corrupts absolutely.” An observation that a person’s sense of morality lessens as his power

increases. This statement has been made by Lord Acton, a British Historian in the late 19th and early 20th century. This doctrine still holds good. Absolute power morally destroys the nature of a person and fills him with destructive pride. If a person save himself from abuse of power, he is humble a person. Explaining further that those who are in power often do not have a people best interest in mind. They are primarily focused on their own benefits and they may abuse their position or power to help themselves.

In the instant case too the applicant being a cabinet minister all powerful person dreamt to establish a University of which he was a perpetual Chancellor like a personal fiefdom and for this he went to any extent adopting all legal, illegal, fair and foul means.

Being a public figure, the applicant has a bundle of responsibility over his shoulder and he cannot afford to shut his eyes towards those means which he has adopted just to achieve his objective, which falls within the realm and ambit of an offence.

However, as bail is a right of any accused and jail is exception, therefore, on the humanitarian ground this Court keeping in view the applicant's deteriorating health, old age and the period undergone in jail, is considering the application of bail be allowed by imposing following conditions.

(i) **As mentioned above, the applicant himself has distanced**

and delinked with the property in dispute though at present lying in the campus of University whose reference is given in paragraphs 8 (vii), 9, 10 and 11 of this judgment, the District Magistrate, Rampur being a representative of Custodian/Administrator of Evacuee/Enemy Property is directed to hold a measurement of the landed property in dispute which is center dispute of this issue admesuring area 13.842 hectares village Singhan Khera, Pargana and Tehsil-Sadar, District Rampur and thereafter raise a boundary wall and barbed wire around it and take the actual physical possession of the property in dispute on behalf of Administrator of Evacuee Property Mumbai latest by 30.6.2022.

In this exercise the the local Revenue authorities, University authorities would fully cooperate and shall not cause any hindrance or obstacle while carrying out aforesaid direction. Since the applicant *Mohd. Azam Khan* is already in jail for almost two and half years, he shall be released on interim bail during this exercise in aforesaid case crime by furnishing a personal bond of Rs.1 lac and two sureties of the like amount to the satisfaction of the court concerned. After completion of aforesaid exercise to the satisfaction of the District Magistrate, Rampur and after taking his final nod in the aforesaid drill, then only his interim bail would be converted into regular bail on the same

terms and conditions and on the same bonds as furnished earlier.

It is expected that the applicant would also render his desired cooperation in completing this object during his release on interim bail. The Custodian Evacuee Property Mumbai is requested to hand over the property in dispute to some para military forces for their training purposes, as already done in the year 2014. The interim bail/regular bail shall be subject to the following further conditions:

(i) THE APPLICANT SHALL SURRENDER HIS PASSPORT ON THE DAY OF HIS RELEASE BEFORE CONCERNED COURT AND ITS FATE AND FUTURE WOULD BE DECIDED AT THE END OF TRIAL.

(ii) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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.

(iii) 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 IPC.

(iv) 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., MAY BE ISSUED AND IF 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 IPC.

(v) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE

THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) 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.

(vi) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

40. The present order in this bail application may sound like a decree of the civil court dealing and deciding the title over the property, if not done so, the Court is failing in its duty or seems like providing a shelter and patronage to a rank trespasser and usurper over the property in dispute as per own admission.

41. It is made clear that observations made in granting interim bail/ regular bail to the applicant shall not in any way affect the learned trial Judge in forming his own independent opinion based on the testimony of the witnesses and decide the issue objectively.

Trial Court is requested to hear the matter on top most priority and decide the same latest by within one year from the date of production of certified copy of the order without granting any adjournment to either of the parties.

42. Since the bail application has been decided under extraordinary circumstances, thus in the interest of justice following additional conditions are being imposed just to facilitate the applicant to be released on bail forthwith. Needless to mention that these additional conditions are imposed to cope with emergent condition-:

1. The applicant shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.

2. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

3. The computer generated copy of such order shall be self attested by the counsel of the party concerned.

4. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

43. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date : 10.5.2022

M. Kumar