

Court No. 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10920 of 2023

Applicant :- Abbas Ansari

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

Counsel for Applicant :- Pranjal Krishna, Arun Sinha, Pranjal Krishna, Siddhartha Sinha

Counsel for Opposite Party :- G.A.

Hon'ble Jaspreet Singh, J.

1. The applicant before this Court is a sitting Member of Legislative Assembly from Mau Assembly Seat no. 356. He has been arraigned as an accused in Case Crime No. 88 of 2023 under Sections 387, 222, 186, 506, 201, 120-B, 195-A and 34 I.P.C. and Sections 7, 8 and 13 of Prevention of Corruption Act, 1988 and Section 42 (b), 54 of Prisons Act, 1894 and Section 7 of Criminal Law (Amendment) Act, 2013, P.S. Karvi Kotwali Nagar, District Chitrakoot along with other named persons and some other unknown persons.

2. However, a charge sheet bearing No. 1 of 2023 dated 10.04.2023 has been filed wherein the applicant has been charged under Sections 387, 506, 201, 120-B, 195-A, 186, 511 and 34 I.P.C. and Section 8 of P.C. Act, 1988, Sections 42 (b) and Section 54 of Prisons Act and Section 7 of Criminal Law Amendment Act as stated in para 5 of the affidavit in support of the bail application.

3. A supplementary affidavit filed on behalf of the applicant on 24.04.2024 is taken on record.

4. The genesis of the instant matter is lodging of the First Information Report on 11.02.2023 at 04:20 hours stating that the present applicant who is a member of the Legislative Assembly was lodged in District Jail,

Chitrakoot. His wife for the past several days has been visiting the applicant in the Jail along with her driver and co-accused Niyaz. She is said to spend 3 to 4 hours inside the Jail without any restrictions. The applicant is alleged to have used the mobile phones of his wife to threaten the witnesses and officials who were connected with the prosecution of the applicant. From the very same mobile, the applicant is alleged to have threatened various persons to extort money and posse of men who are loyal to the applicant would collect the money and bring it to the applicant.

5. It has further been alleged that the wife of the applicant frequently visited the jail without complying with the formalities and the prescribed restrictions and the applicant was being provided all sorts of benefits during his incarceration for which the officials of the jail were paid both in cash and kind. It is also alleged that the driver of the applicant's wife namely Niyaz along with the officials of the Jail were planning to stage an escape the applicant from the Jail.

6. Upon the information received from the informant, the District Magistrate and the Superintendent of Police in civil clothes and in a private vehicle made a surprise inspection of the Jail. The applicant was not found in his barrack rather he is said to be in the room right adjacent to the room of the Jail Superintendent along with his wife. Upon opening and entering the said room, the District Magistrate and the Superintendent of Police found applicant's wife but the applicant was not there.

7. The police personnel posted on the Gate of the jail informed that the applicant had moved from the said room to his barrack a few minutes ago. However, the wife of the applicant was searched and from her bag, two

mobile phones, certain ornaments, cash of Rs. 21,000/- and foreign currency of 12 Riyals was recovered.

8. The police authorities required the applicant's wife to give the passwords to open the two phones which were confiscated, however, she did not cooperate and rather gave incorrect passwords which resulted in the two phones being locked.

9. It is further alleged that upon further questioning, it was informed that the applicant's wife along with the other accused and police officials were planning to stage an escape for the applicant. Certain witnesses were threatened and in case if they did not cooperate with the applicant i.e. if they did not turn hostile, they were to be eliminated.

10. It is also alleged that on the applicant's instructions, his posse of loyalist were to create an atmosphere of terror so that the said alleged witnesses may not give their testimony and they would abide by the demands for money made by the applicant as extortion money.

11. Sri Arun Sinha, learned counsel for the applicant duly assisted by Sri Pranjal Krishna has submitted that from the bare perusal of the First Information Report, it would primarily indicate that no offence has been made out against the applicant. A meaningful reading of the FIR would indicate that primarily the allegations are against the wife of the applicant and the other co-accused Niyaz. Most of the other co-accused are all police personnel or jail authorities.

12. It has further been pointed out that the police has already filed a charge sheet and apparently no evidence could be unearthed by which it

could be remotely suggest that the applicant was involved in any sort of extortion. There has been no evidence nor the call detail report could pin point any call made by the applicant to any witness whom it is alleged that the applicant had threatened.

13. It is further pointed out that all the co-accused including the wife of the applicant have been enlarged on bail. The bail orders of the co-accused Faraz, Navneet, Ashok, Shahbaz, Santosh, Jagmohan, Chandrakala and Nikhat have been placed on record as Annexure Nos. RA-1 to RA-8 with the rejoinder affidavit dated 08.11.2023.

14. Sri Sinha has further submitted that the applicant has a criminal history of ten cases and except for a case filed by the Enforcement Directorate under Section 3/4 of the PMLA Act, 2002, in all the other cases, the applicant has been enlarged on bail including in the Case Crime no. 431 of 2019 wherein the bail has been granted by the Apex Court on 18.03.2024 and the copy of the said bail order has been brought on record as Annexure no. SA-1 with the supplementary affidavit dated 24.04.2024.

15. Sri Sinha has further urged that merely because the applicant has a criminal history does not necessarily means that he is guilty of an offence especially in the case as the present, at hand. The applicant apart from being a member of the Legislative Assembly is also a National Level Rifle Shooter and has earned laurels for his country. The applicant is in Jail since 11.02.2023 and in so far as the present case emanating from Case Crime No. 88 of 2023 is concerned, it would reveal that certain Sections which have been invoked in the said case are primarily directed against the public servants, however, in so far as the present applicant is concerned, he has

been charged under Section 387, 506, 186 I.P.C and they are all punishable with a maximum sentence up to 7 years. In so far as Section 201, 120-B, 195-A, 511 and Section 34 I.P.C. is concerned, they can only be invoked if any contingency mentioned in the said section is proved in trial. In so far as the provisions of the Prevention of Corruption Act are concerned, they are punishable up to 7 years and Section 42 (b) and Section 54 of the Prisons Act also carry a sentence up to maximum two years.

16. On the aforesaid strength it is urged that the charge sheet has already been filed and it discloses a list of 46 proposed witnesses out of which three are eye-witnesses, apart from the complainant, and then there are various other formal and police witnesses. In the aforesaid circumstances, the applicant is not in a position either to tamper with the evidence or influence any witness. In the said circumstances, where the applicant has been in Jail since 11.02.2023, the instant bail application deserves to be allowed.

17. Sri Vinod Shahi, learned Additional Advocate General ably assisted by Sri Anurag Verma, learned A.G.A has opposed the bail application.

18. It has been submitted that during the course of investigation, ample material was collected which clearly indicated the complicity of the Jail Authorities and Sri Niyaz, the co-accused who is the driver of the wife of the applicant who along with the applicant and the other Jail Authorities were staging an escape.

19. It has also been pointed out that the CCTV footage has been recovered which reveals that the wife of the applicant used to visit the Jail

after making entries in the register and thereafter she had unrestricted entry and access to the applicant lodged in the said jail including entering and exiting the Jail without being searched. As per the statement of the Deputy Jailor which was recorded before the Magistrate it indicated that the wife of the applicant and her driver used to visit the Jail frequently without any restriction and search, he attempted to raise an objection against this practice and conduct, but he was advised not to do so and the applicant could get free access inside the Jail roaming freely.

20. It has further been submitted that the applicant yields enormous influence both in terms of money power as well as muscle power and under this circumstances, the applicant, if released at this stage, would influence the witnesses and this would turn the tide of the course of trial which would adversely impact the case of the prosecution.

21. The learned State Counsel has also pointed out that in so far as the bail order of Nikhat who is the wife of the applicant is concerned, she has been enlarged on bail by the Apex Court, as shall be evident by the order itself, on the sole consideration of being a nursing mother with one year old child, apart from the fact that she did not have any criminal history, however, the same is not referable to the present applicant.

22. It is also submitted that even though the applicant may have been enlarged on bail in various cases where he is involved but the fact remains that in the instant case, the applicant has misused the process and the procedure established by law on the strength of his sheer muscle and money power. If the applicant being lodged in Jail could yield influence over the Jail Authorities, it can be well imagined how the applicant would

react once he is enlarged on bail. In the aforesaid circumstances, the applicant is not entitled for bail and in support of their submissions, the learned Additional Advocate General and Sri Verma have relied upon the decision of the Apex Court in **Harjit Singh v. Inderpreet Singh Alias Inder and Another, (2021) 19 SCC 355 ; Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 and Munnilaxmi Vs. Narendra Babu and Another; 2023 SCC Online SC 1380.**

23. The Court has heard the learned counsel for the parties and also perused the material on record.

24. The facts on record as they unfold is that the applicant does have a criminal history of ten cases. The earliest case in point of time is Case Crime no. 431 of 2019 and the instant case is the latest, thus, indicating that between 2019 to 2023, the applicant has been involved in ten cases including one lodged under the PMLA Act. It is also not disputed that in all the cases except the case under the PMLA, the applicant has been enlarged on bail by the coordinate Bench of this Court and including in the case Crime No. 431 of 2019 by the Apex Court vide order dated 18.03.2024.

25. It is also a matter of fact that in the instant case, apart from the applicant, five other named persons and certain other unnamed all have been enlarged on bail by the coordinate Bench of this Court including the other co-accused Nikhat who is the wife of the applicant who has been enlarged by the Apex Court by means of order dated 11.08.2023.

26. The record further reveals that a Coordinate Bench of this Court by means of its order dated 12.09.2023 had quashed the charge sheet and the

cognizance order emanating from Criminal Case No. 11762 of 2023 arising out of Case Crime No. 106 of 2022. It is also not disputed that the applicant is a member of the Legislative Assembly and a public figure.

27. During the course of submissions, the State had referred to a decision of a Coordinate Bench dated 20.11.2023 relating to the present applicant where he had sought bail in Case Crime No. 431 of 2019 which came to be rejected by a Coordinate Bench of this Court by means of order dated 20th November, 2023 and it was urged that certain observations made by the Coordinate Bench while rejecting the said bail application be considered for the purposes of ascertaining the kind of influence, the present applicant is capable of exercising. In this regard, suffice to state that in the said Case Crime No. 431 of 2019, the applicant has been enlarged on bail by the Apex Court vide order dated 18.03.2024, thus, for the aforesaid reasons, the said observations may not have much persuading effect on the instant case.

28. In *Harjit Singh (Supra)*, the Apex Court while considering the discretionary power for grant of bail it referred to earlier decisions and held that while considering the grant of bail, the following factors need to be kept in mind inter-alia 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.

29. In the said case, what was noticed by the Apex Court was that the said applicant who had obtained bail after being released committed another offence and went to the Jail. The Apex Court noticed that there was high possibility of threat and danger to the life and safety of the appellant before the Apex Court and in the aforesaid circumstances, the antecedents were such that the Apex Court while allowing the appeal before it cancelled the bail.

30. In **Brijmani (Supra)**, the Apex Court once again considering the issue of bail while dealing with the parameters required to be noticed by the Court, it has also noticed one more aspect while exercising its discretion in paragraph nos. 37 and 38 as under:-

“37. Ultimately, the court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other.

38. Thus, while elaborating reasons may not be assigned for grant of bail, at the same time an order dehors reasoning or bereft of the relevant reasons cannot result in grant of bail. It would be only a non-speaking order which is an instance of violation of principles of natural justice. In such a case the prosecution or the informant has a right to assail the order before a higher forum.”

31. In **Munnilaxmi (Supra)**, the Apex Court in paragraph nos. 19 to 21 have held as under:

“19. We have given our thoughtful consideration to the rival submissions and perused the material on record. It appears that the sudden change of stance shown by the most vital witnesses, namely, the family members of the Deceased within 20 days of their examination-in-chief cannot be a mere coincidence. The Appellant has been vigorously pursuing this appeal seeking cancellation of bail given to Respondent No. 1. In her examination-in-chief, she has specifically named Respondent No. 1 as the main conspirator in the murder of her daughter. Her sudden somersault, therefore, cannot be easily detached from the chain of allegations made against Respondent No. 1 in the past, of influencing the police, hiring goons, repeatedly assaulting the

Deceased, and various attempts to take away her life. All these accusations, for the limited purpose of these proceedings, do suggest that Respondent No. 1 has the potential to influence the investigation or the witnesses who were slated to depose against him. The seriousness of allegations levelled against Respondent No. 1 by the Deceased during her lifetime or by the Appellant before the Police or in this appeal ought to be evaluated against this backdrop.

20. This Court undoubtedly has a narrow scope of interference in an order granting bail while exercising its power of judicial review and will be invariably reluctant to interfere in such order even if it has a different opinion. The Courts often grapple with balancing the most precious right to liberty embodied in Article 21 of the Constitution on one hand and the right of the orderly society, which is committed to the rule of law, on the other. The delicate balance in the case of long incarceration is drawn by releasing a suspect on bail on such terms and conditions that will ensure that a fair and free trial is not hampered. However, if it is found that an undertrial has attempted to misuse the concession of bail either by influencing the witnesses or tampering with the evidence or trying to flee from justice, such person can be committed to custody by withdrawing the concession of bail.

21. The Courts are under an onerous duty to ensure that the criminal justice system is vibrant and effective; perpetrators of the crime do not go unpunished; the witnesses are not under any threat or influence to prevent them from deposing truthfully and the victims of the crime get their voices heard at every stage of the proceedings.”

32. Considering the aforesaid parameters and applying it to the facts of the instant case, it would be seen that the applicant is a Member of Legislative Assembly. He is a person who holds a responsible position and is a representative of the public. His conduct has to be of a higher standard, than other common persons of the society. The members of the Legislative Assembly are also the law makers and in juxtaposition, it is not appropriate that a law maker may be seen as a law breaker. The applicant is a National Level Rifle Shooter and as stated by the learned counsel for the applicant, he has earned laurels for his country and that being so it would be explicitly clear that any sport ingrains two habits in a person i.e. discipline and the other is respect, for rules. A person with the aforesaid backdrop knowing fully well that he was lodged in the Jail and his wife had been repeatedly meeting the applicant and from the CCTV footage as well as statements of the witnesses elicited during investigation it prima facie reflects towards

the complicity of the applicant.

33. In normal circumstances and even as per the law, the Jail Authorities do not and could not grant such unrestricted access to any person which has been allegedly extended to the wife of the applicant, obviously at the asking of the applicant. The recovery of two mobile phones from the wife of the applicant who was found in the Jail premises in a room where she could not have access unless the Jail Authorities turned a blind eye.

34. Allegedly such dereliction of duty /violation of rules and regulations at the behest of the Jail Authorities, frequently and selectively for the applicant and his wife may not have been possible merely for monetary gains. Considering the profile and the background of the applicant and his family antecedents, the allegations may not be completely without substance. If such influence whether for monetary reason or under threat or coercion, if can be exercised over police and prison authorities so effectively who are basically enforcers of law then it can be well imagined how the applicant can effectively garner power to influence any witness or to persuade him to change his stand and this aspect if seen in light of the fact that the evidence is yet to commence. In the aforesaid facts and circumstances where the evidence is yet to commence and there are eye-witnesses and certain police authorities who were to be examined, hence, at this stage, this Court is not inclined to grant bail to the applicant which is accordingly **rejected**. The Trial Court shall expedite the trial and endeavour be made to decide the same as expeditiously as possible. The prosecution State shall also ensure that they do not seek any unnecessary adjournments for examining of the witnesses. It is also made clear that any observations

made by this Court in the instant order may not be taken as an expression of opinion on merits and the Trial Court shall proceed strictly in accordance with law.

Order Date :- 01st May, 2024

Asheesh

(Jaspreet Singh, J.)