

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 23399 of 2022

Applicant :- Sachin Sharma And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Mishra, Shyam Surat Shukla

Counsel for Opposite Party :- Azim Ahmad Kazmi, G.A.

Hon'ble Pankaj Bhatia, J.

1. Supplementary affidavit filed today in Court is taken on record.
2. Heard Shri Saghir Ahmad, learned Senior Advocate assisted by Shri Rajesh Kumar Mishra, learned counsel for the applicants; learned AGA for the State; Shri Azim Ahmad Kazmi, learned counsel for the informant and victim who has filed an intervention application and perused the record.
3. The applicants seek enlargement on bail in FIR No.45 of 2022, under Section 307 IPC & Section 7 of Criminal Law (Amendment) Act, P.S. Pilkhuwa, District Hapur.
4. The facts that emerge from the records are that the FIR came to be lodged on 03.02.2022 alleging that on the said date at about 05:20 pm the victim alongwith a Member of Parliament was going from Meerut to Delhi and as soon as the car reached the toll plaza, some unknown assailants with an intent to kill started indiscriminate firing, however, the Member of Parliament could escape somehow and the assailants ran away from the spot in question. It was also stated that the incident was seen by two persons named in the FIR whose addresses were also disclosed.
5. In the light of the said, based upon the analysis of CCTV footage, the Investigating Officer formed an opinion that he could identify the applicants who had done the actual indiscriminate firing as alleged in the FIR and as such, the applicants were linked with the offence in question and arrested. Subsequently, the applicants applied for bail and were granted bail vide order dated 12.07.2022. While applying for bail, the applicants had argued before this Court that the co-accused Aalim was enlarged on bail by an order passed in Criminal Misc. Bail Application No.24787 of 2022, and thus, the applicants ought to be enlarged on bail on the ground of parity. This Court while dealing with the bail applications of the applicants recorded that as the applicants were identically placed with the co-accused who have been enlarged on

bail, the applicants were also enlarged on bail. Several conditions were also imposed against the applicants as conditions for grant of bail.

6. After the grant of bail on 12.07.2022, an SLP came to be filed on behalf of the victim before the Hon'ble Supreme Court on 22.08.2022 challenging the order of grant of bail to the applicants mainly on the ground that no case for parity was made out as argued by the applicants before the High Court. It was further pleaded before the Supreme Court that after the grant of bail, the applicants had misused the said liberty by giving an interview before the Press in which, according to the learned counsel for the opposite parties, threats were issued to the victim who was a sitting Member of Parliament.

7. In terms of the pleadings made before the Supreme Court through the SLP, an order came to be passed by the Supreme Court wherein the Supreme Court set aside the order of grant of bail mainly on two grounds: that, no reasons were given at all while releasing the accused on bail, and that, even *prima-facie* opinion was not given in respect of the materials collected during the course of the investigation which was a part of the charge-sheet. The Supreme Court further felt that the seriousness of the offence alleged against the applicants was not considered by the High Court. Thus, the order was set aside and the matter was remanded for adjudication afresh. As such, the matter has been placed before me for consideration of the bail application filed by the applicants afresh.

8. In the light of the said, the submission of learned counsel for the applicants is that in terms of the FIR no one was named in the FIR, the applicants were linked with the offence in question based upon analysis of the CCTV footage drawn from the toll plaza in which, according to the Investigating Officer, the persons shown were the applicants. Subsequently, the weapon allegedly used was also recovered at the instance and pointing out of the applicants. In the light of the said evidence, the submission of learned counsel for the applicants is that a view was formed from the analysis of the CCTV footage with regard to identity of the applicants, however, the Investigating Officer has done no exercise whatsoever to identify the persons seen in the CCTV footage with the actual photographs which, according to him, is a major lacunae in the investigation. The recovery memo is on record as Annexure - 4 to the bail application. The said recovery memo is recovery memo - cum - confessional statement of the applicants wherein the applicants have allegedly confessed to the commissioning of the

offence against the victim. He argues that there were no independent witnesses to the search as is reflected from the recovery memo. He further argues that the confessional statement of the applicants is a weak piece of evidence and thus, *prima-facie*, the evidence to link the applicant with the offence in question suffers from infirmities which cannot stand the scrutiny of law. He further argues that admittedly no one has sustained injuries arising out of the incident as recorded in the FIR. He lastly argues that the applicants are in custody since 04.02.2022 and out of the total proposed 60 witnesses, only 3 witnesses have been examined which are the informant and the two persons sitting in the car alongwith the victim who have not identified or named the applicants in their testimonies recorded during trial. He, thus, argues that the applicants have suffered pre-trial detention of more than two years and have no criminal antecedents, as such, they may be enlarged on bail.

9. Learned counsel for the informant and the victim has filed an intervention application and opposed the bail application by arguing that while granting bail to the applicants by this Court in its order dated 12.07.2022, the Court had framed certain conditions - one of which that he will not threaten the witnesses has been violated by applicant no.1 insofar he has bragged before the media that he had no remorse and would not apologize at all and had also issued warnings to the victim in the said interview which is on record alongwith the intervention applicant as Annexure - 8. He further argues that this fact of applicant no.1 misusing the liberty was adequately pleaded before the Supreme Court and forms a part of the SLP before the Supreme Court and thus, the said fact had also weighed in the mind of the Supreme Court while passing the remand order. He further argues that apart from the CCTV footage, the presence of the applicants on the spot in question was also verified on the basis of call detail records by the Investigating Officer. He, however, does not dispute that the applicants have no criminal antecedents and that only 3 witnesses have been examined out of the total proposed 60 witnesses out of which 24 are fact witnesses. He, thus, argues that even if the Court is inclined to enlarge the applicants on bail, some serious conditions be imposed against the applicants so as to ensure that they do not violate the liberty granted by this Court or in any way adversely affect the trial.

10. Considering the submissions made at the Bar, what emerges is that the applicants were not named in the FIR, they were linked with the offence in question based upon the opinion expressed by

the Investigating Officer after analyzing the CCTV footage which was probably linked by the CDR records, although, the material to that extent is not available before this Court; in the three statements recorded so far, the name of the applicants has not surfaced as admittedly the victim as well as the two persons sitting in the car did not know the applicants, and the material of verifying and matching the identity of the persons seen in the CCTV footage with the actual photographs *prima-facie* appears to be missing from the case diary. Thus, the evidences linking the applicants with the offence in question are *prima-facie* weak evidences at this stage. In any case, the same is to be seen during trial and any observation with regard to the quality of the evidences might have an adverse affect on the trial. Apart from the said, the applicants have suffered pre-trial detention since 04.02.2022 and admittedly have no criminal antecedents, thus, *prima-facie*, there is no material on record to suggest that the applicants, if enlarged on bail, can in any way adversely affect the trial as the evidences linking the applicants with the offence in question has to be testified by the police authorities who do not even claim that they are threats from the applicants in any manner.

11. Considering all the aforesaid facts coupled with the fact that the interview of applicant no.1 heavily relied upon by the counsel for the informant and victim, *prima-facie*, appears to be in the realm of speech or interview given by applicant no.1 before the telemedia and there being nothing more to suggest that actual threat was issued by the applicant to the victim, *prima-facie*, a case for bail is made out based upon the reasoning as recorded above in composite.

12. In view thereof, the bail application is ***allowed***.

13. Let the applicants ***Sachin Sharma*** and ***Subham Gurjar*** be released on bail in aforesaid FIR number on their furnishing a personal bond with two sureties of the like amount each separately to the satisfaction of court concerned with the following conditions:

(a) The applicants shall execute a bond to undertake to attend the hearings;

(b) The applicants shall not commit any offence similar to the offence of which they are accused or suspected of the commission; and

(c) The applicants shall not directly or indirectly make any

inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

Order Date :- 1.5.2024

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