

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2136 of 2022

Applicant :- Avinash @ Kumbhkaran

Opposite Party :- State Of U.P. Thru.Addl.Chief Secy. Civil Sectt.
U.P.Lko.

Counsel for Applicant :- Prachi

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Ms. Prachi, learned counsel for applicant and learned A.G.A. for the State.

2. The present bail application has been filed by the applicant seeking bail in case crime no. 0625 of 2020, under sections 457, 380, 411, 413 I.P.C. registered at Police Station-Lalganj, District-Pratapgarh.

3. As per the prosecution story, four unknown persons intruded in the house of the first informant-Shamimuddin and stole away valuables including gold and silver jewellery. The same day, they intruded in the house of his brother Nasimuddin and stole away the jewellery and other articles. This incident occurred in the night of 16/17.09.2020. During the course of investigation, some culprits involved in a separate criminal case i.e., case crime no. 512 of 2020 under sections 399, 401, 411, 413, 414 IPC were arrested and stolen articles, the instruments used for house breaking, were recovered. The person arrested at that time namely, Deepak Saroj S/o Kamlesh Saroj, disclosed that they used to commit dacoity in the leadership of the instant applicant-Avinash @ Kumbhkaran. He was mastermind of number of such incidents of dacoity/theft.

4. It is contended on behalf of the applicant that he has been falsely implicated in this case at the behest of the police. The only evidence against him is a confessional statement given by a person, who was arrested in a separate criminal case. As such that statement has no evidentiary value against the accused/applicant. The applicant is in jail since 11.10.2020 i.e., about 3 years now.

It is further submitted that 18 cases have been cited against him as his previous criminal history; in six of them he is on bail; in one of the case relating to section 302 IPC, the accused has been acquitted and the status of rest of the cases is not known.

The counsel for the applicant expressed his ignorance as regard appearance of the accused in those cases, present status and whether applicant is wanted or not. The details of those cases are as below:-

- (i) case crime no. 782 of 2019 under sections 457, 380, 411, 413 IPC, Police Station-Lalganj, District Pratapgarh;
- (ii) case crime no. 833 of 2019 under sections 457, 380, 411, 413 IPC, Police Station-Lalganj, District Pratapgarh;
- (iii) case crime no. 595 of 2020 under sections 457, 380, 411, 413 IPC, Police Station-Lalganj, District Pratapgarh;

- (iv) case crime no. 625 of 2020 under sections 457, 380, 411, 413 IPC, Police Station-Lalganj, District Pratapgarh;*
- (v) case crime no. 653 of 2020 under sections 457, 380, 411, 413 IPC, Police Station-Lalganj, District Pratapgarh;*
- (vi) case crime no. 121 of 2003 under sections 8/22 NDPS Act, Police Station-Antu, District Pratapgarh;*
- (vii) case crime no. 26 of 2003 under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act,, Police Station-Antu, District Pratapgarh;*
- (viii) case crime no. 17 of 2003 under sections 8/20 NDPS Act, Police Station-Antu, District Pratapgarh;*
- (ix) case crime no. 2236 of 2009 under sections 7/25 Arms Act, Police Station-Cant., District Faizabad;*
- (x) case crime no. Nil of 2009 under sections 41/411 IPC, Police Station-Cant., District Faizabad;*
- (xi) case crime no. 837 of 2009 under section 380 IPC, Police Station-Pura Kalandar, District Faizabad;*
- (xii) case crime no. 913 of 2009 under section 380 IPC, Police Station-Pura Kalandar, District Faizabad.*

It is vehemently contended by the applicant that the instant case stands on a very weak ground and that he is in custody since 11.10.2020 i.e., last 3 years and he assured the court that he will cooperate in the trial and will abide by the conditions, if any, imposed by this court, therefore he may be released on bail.

5. The application for bail is opposed by learned A.G.A., however it is conceded that the applicant is in custody since about 3 years. At the same time, it is contended by learned AGA that out of history of 18 cases, the applicant admits to have been enlarged on bail in 6 cases only. In rest of the 12 cases, he has not been able to demonstrate that he was granted bail. In such circumstances, a suitable condition should be imposed on the applicant either to surrender or to verify that he has been duly enlarged on bail.

6. Countering the above contention, the applicant submits that he has been in judicial custody for the last 3 years and that in case he was wanted in other cases as given in the list submitted by the prosecution, it was duty of the prosecution side to inform the court concerned and to ensure his production from jail before the court concerned. It is pointed out that some of such cases are purportedly pending in District-Faizabad and others in District-Pratapgarh and that he has no resources to appear in cases which are pending in other district on his own.

7. In the above circumstances, the prosecution is expected to verify by itself the relevant facts, as regard release of the accused on bail in the aforesaid 12 cases. It is for the prosecution to intimate the court concerned that the accused is under detention and he can be produced before it from jail itself, (if such cases are running). **The prosecution is further expected to ensure his production in those cases at the earliest before he is actually released from the prison.**

8. I considered the nature of allegation, evidence proposed and all other facts and circumstances of the case including period of detention. In my view, a case for bail is made out.

9. Let applicant - **Avinash @ Kumbhkaran** be released on bail in the aforesaid Case Crime Number on his furnishing personal bond and two

reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not temper with evidence/witnesses.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (a) hearing/framing of charge and (b) recording of statement under Section 313 Cr.P.C. without exception.

(iv) It is further provided that before issuing the release order, present and permanent address of the accused as well as sureties shall also be duly verified and the applicant shall submit undertaking that he shall not change his address without prior intimation to the court concerned.

10. Any violation of above conditions will be treated misuse of bail and learned Court below will be at liberty to pass appropriate order.

11. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

12. Let copy of bail order be immediately transmitted to District Judge, Faizabad and District Judge, Pratapgarh for taking necessary action in the light of observations in para nos. 6 and 7 of the orders. The learned AGA shall also take necessary steps for compliance of above observations.

Order Date :- 22.11.2023

Vikram