

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2023:AHC-LKO:70247

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10361 of 2023

Applicant :- Akhand Pratap Singh

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

Lko

Counsel for Applicant :- Naved Ali,Arbab Hussain Zaidi,Paresh Mishra,Ravi Prakash Mishra,Sandeep Yadav

Counsel for Opposite Party :- G.A.,Akshay Kumar Singh,Ruchir

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Malay Prasad Advocate alongwith Ms. Saloni Mathur, Ms. Taniya Makker, Sri Piyush Shukla and Sri Paresh Mishra Advocates, the learned counsel for the applicant, Sri Anurag Verma, the learned A.G.A. for the State and Sri Akshay Kumar Singh, the learned counsel for the informant.
2. This is the second application seeking release of the applicant on bail in FIR/Case Crime No. 15 of 2021, under Sections 302, 307, 201, 212, 120-B and 34 I.P.C., registered at Police Station Vibhuti Khand, District Lucknow.
3. The first application was rejected by means of an order dated 15.12.2022, passed in Criminal Misc. Bail Application No.13773 of 2022 after taking into consideration the allegations levelled in the F.I.R. that while the complainant was going with his friend Ajit Singh near Kathauta Chauraha in Gomti Nagar, the co-accused Kanhaiya Vishwakarma came there along with three unknown persons and started firing indiscriminately towards the informant and Ajit Singh. The informant suffered a gun-shot injury in his leg whereas Ajit Singh died on the spot. The informant stated that the incident was carried out on the

instructions of Dhruv Singh @ Kuntu Singh and Akhand Pratap Singh (the applicant).

4. It is recorded in the order dated 15.12.2022 that the prosecution case is that the applicant and co-accused Kuntu Singh were threatening the deceased for the past two years for restraining him from giving evidence in a case relating to murder of an ex-MLA Sarvesh Singh regarding which an F.I.R. No. 384 of 2013 had been registered in Police Station Jiyapur. The case was at the stage of evidence and statement of the deceased Ajit Singh was scheduled to be recorded in the week following the week in which the incident took place.
5. The second application for bail has been moved on the ground that after passing of the aforesaid order the Hon'ble Supreme Court has passed an order dated 02.01.2023 in Special Leave Petition (Crl.) No.12751 of 2022 staying further proceedings of the trial. The applicant is languishing in jail since 29.01.2021 and the proceedings of the trial have been stayed, he cannot be kept incarcerated for an indefinite period without his trial.
6. Sri. Malay Prasad, the learned Counsel for the applicant has submitted that the applicant's first bail application was rejected on the wrong factual premise that the deceased was a witness in a murder case in which the applicant was also involved with the other co-accused persons, whereas the applicant was not an accused in that case.
7. The learned counsel for the applicant has further submitted that the informant and the deceased, both were involved in commission of various offences together along with several other persons and they were members of the same gang of which the co-accused Kuntu Singh was also a member. In support of this contention the learned counsel for the applicant has drawn attention of this court to a copy of the judgment dated 30.03.2022, passed by the learned Additional Sessions Judge/Special Judge (Gangster Act), Court No.6, Azamgarh in Special

Trial No.73 of 2011, in which Dhruv Singh @ Kuntu Singh (co-accused), Mohar Singh (the informant), Ajit Singh (the deceased) and Girdhari @ Kanhaiya @ Doctor (co-accused) were accused and all of whom were convicted.

8. The State and the informant have filed their counter affidavits opposing the bail application. The State has filed a supplementary counter affidavit annexing therewith a copy of the statement of the co-accused Dhruv Singh @ Kuntu Singh recorded during investigation wherein he has stated that he and the applicant are friends since long and they are involved in committing various offences together since the year 1997. He had formed a gang with the applicant, Munna Singh and Ramesh Singh in the year 2014. One Sachin Pandey had entered into a dispute with the applicant in Azamgarh Jail and upon coming to know about this fact Ajit Singh had started spreading rumors that Sachin had beaten up the applicant in an attempt to diminish their hold in the field of crime. Being aggrieved by this he and the applicant started making plans for murder of Ajit Singh while they were lodged in Azamgarh jail. He has narrated in detail the steps taken by the accused persons for committing the offence.
9. Sri Anurag Verma, the learned Additional Government Advocate-I, has submitted that the accused has a long criminal history of 40 cases and he has been acquitted in 13 cases as the witnesses turned hostile or did not come forward to give evidence. The applicant is involved in 13 cases involving commission of the offence of murder.
10. The learned counsel for the applicant has submitted that the applicant has been acquitted in all the cases in which allegations of commission of offence under Section 302 I.P.C. were involved.
11. The learned counsel for the applicant has relied upon the judgment of Hon'ble Supreme Court in the case of **Sanjay Chandra v. CBI**, (2012) 1 SCC 40, **Dataram Singh v. State of Uttar Pradesh**, (2018) 3 SCC

22 and **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)**: 2023 SCC OnLine SC 352.

12. The learned A.G.A. has relied upon the judgment of Hon'ble Supreme Court in the cases of **Sudha Singh Vs. State of U.P. and another**: (2021) 4 SCC 781, **Ishwarji Nagaji Mali Vs. State of Gujarat and another**: (2022) 6 SCC 609 and **Meena Devi Vs. State of U.P. and another**: 2022 SCC OnLine SC 676.

13. In **Sanjay Chandra v. CBI**, (2012) 1 SCC 40, the Hon'ble Supreme Court has reiterated that: -

“21. In bail applications, generally, it has been laid down from the earliest times that 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 is 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.

22. 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 unconvicted 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.

23. Apart from the question of prevention being the object of 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 unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

14. In the case of **Dataram Singh v. State of Uttar Pradesh**, (2018) 3 SCC 22, the Hon'ble Supreme Court was pleased to reiterate the law regarding grant of bail in the following words:--

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

* * *

*5. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in **Nikesh Tarachand Shah v. Union of India** [(2018) 11 SCC 1] going back to the days of the Magna Carta. In that decision, reference was made to **Gurbaksh Singh Sibbia v. State of Punjab** [(1980) 2 SCC 565] in which it is observed that it was held way back in **Nagendra v. King-Emperor** [AIR 1924 Cal 476] that bail is not to be withheld as a punishment. Reference was also made to **Emperor v. Hutchinson** [AIR 1931 All 356] wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.”*

15. In **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)** 2023 SCC OnLine SC 352, the Hon'ble Supreme Court reiterated the following law laid down in **Hussainara Khatoon v. Home Secy., State of Bihar**: (1980) 1 SCC 81: -

“Now obviously procedure prescribed by law for depriving a person of liberty cannot be “reasonable, fair or just” unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably

quick trial can be regarded as “reasonable, fair or just” and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.”

16. The aforesaid cases merely reiterate the well settled general principles regarding grant of bail. However, in **P. Chidambaram v. CBI**, (2020) 13 SCC 337, the Hon’ble Supreme Court had reiterated the well settled principles regarding grant of bail that: -

“21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:

- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;*
- (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;*
- (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;*
- (iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;*
- (v) larger interest of the public or the State and similar other considerations.*

22. There is no hard-and-fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner.”

(Emphasis sullied)

17. In the case of **Sudha Singh** (2021) 4 SCC 781, relied upon by the learned A.G.A.-I, the following observations have been made by the Hon’ble Supreme Court: -

“7. We find in this case that the high court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. It is needless to point out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for

courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims.

8. *This Court in Neeru Yadav vs. State of U.P. (2014) 16 SCC 508 held that when a stand was taken that the accused was a history sheeter, it was imperative for the High Courts to scrutinise every aspect and not capriciously record that the accused was entitled to be released on bail on the ground of parity.*

9. *In Ash Mohammad vs. Shiv Raj Singh (2012) 9 SCC 446, this Court observed that when citizens were scared to lead a peaceful life and heinous offences were obstructions in the establishment of a well-ordered society, the courts play an even more important role, and the burden is heavy. It emphasized on the need to have a proper analysis of the criminal antecedents of the accused.*

10. *In Prasanta Kumar Sarkar vs. Ashis Chatterjee and Another (2010) 14 SCC 496, it was held that this Court ordinarily would not interfere with a High Court's order granting or rejecting bail to an accused. Nonetheless, it was equally imperative for the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the ratio set by a catena of decisions of this Court. The factors laid down in the judgment were:*

- (i) *Whether there was a prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) *nature and gravity of accusations;*
- (iii) *severity of the punishment in the event of a conviction;*
- (iv) *danger of the accused absconding or fleeing, if granted bail;*
- (v) *character, behaviour, means, position and standing of the accused;*
- (vi) *likelihood of repetition of the offence;*
- (vii) *reasonable apprehension of the witnesses being influenced; and*
- (viii) *danger of justice being thwarted by grant of bail.*

11. *There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail."*

18. In the case of **Ishwarji Nagaji Mali** (2022) 6 SCC 609, the Hon'ble Supreme Court has held in that: -

"The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of

*evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that **for the purposes of granting the bail the Legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge.**”*

(Emphasis supplied)

19. In the case of **Meena Devi** 2022 SCC OnLine SC 676, the Hon’ble Supreme Court relied upon its earlier judgment in the case of in the case of **Ram Govind Upadhyay versus Sudarshan Singh and Others** (2002) 3 SCC 598, wherein the following guiding principles were laid down for exercising the power to grant bail:-

“3. Grant of bail though being a discretionary order – but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case..... The nature of the offence is one of the basic considerations for the grant of bail – more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The consideration being:

- (a) *While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*

- (b) *Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.*
- (c) *While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.*
- (d) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

20. The learned counsel for the informant has stated that the applicant has a long history of 40 cases and in the order dated 19.11.2019, passed by the Hon'ble the Apex Court in S.L.P. (Crl.) No.7951 of 2016, **Bachche Lal Yadav Vs. Akhand Pratap Singh and another**, it has been recorded after perusal of the status report submitted by the State that the applicant was absconding from law for the last several years. The Hon'ble Supreme Court has directed the Superintendent of Police, Azamgarh to take steps for ensuring arrest of the applicant. In spite of repetitive directions issued by Hon'ble Apex Court the applicant could not be arrested and in the order dated 19.11.2019 passed in the aforesaid case the Hon'ble Supreme Court has recorded that the trial court had noted in its order that threatening letter has been received from the absconding applicant which was written to the Additional District Judge, Azamgarh.
21. Replying to the aforesaid submission, learned counsel for the applicant has submitted that an F.I.R. No. 11 of 2020 under Sections 50, 186 and 450 I.P.C. was registered in P.S. Kotwali District Azamgarh regarding the alleged threatening letter purportedly sent by the applicant but after investigation, the allegations could not be established and, accordingly, a Final Report was submitted on 14.08.2021. The learned Counsel for the applicant has further stated that the applicant has been granted bail

in the case in which the Hon'ble Supreme Court had made the aforesaid observations by means of an order dated 27.09.2022, passed by this court sitting at Allahabad in Criminal Misc. Bail Application No.40238 of 2022.

22. From the aforesaid discussion, the following facts prima facie appear which would be relevant for deciding this application: -

- (i) The applicant is alleged to have hatched a controversy under which a witness of a murder case, in which co-accused Dhruv Singh alias Kuntu Singh was a witness, was killed through hired shooters, on a busy public road, a few days prior to the date on which his testimony was scheduled to be recorded. Another person had also suffered a gun-shot injury in the incident, in which a total of 30 rounds were fired.
- (ii) The co-accused Dhruv Singh alias Kuntu Singh has given elaborate description of his relations with the applicant and the reason for and the manner in which the controversy was hatched, while both of them were in jail. The prosecution claims that applicant's call detail records support the allegation of his being a part of the conspiracy.
- (iii) In case of his conviction, the applicant may even be sentenced to death.
- (iv) The applicant has a long criminal history of 40 cases, 13 of which involve the allegation of commission of the offence of murder.
- (v) In all the 13 cases which have been decided till date, the prosecution could not secure his conviction, therefore, the possibility of witnesses being influenced by the applicant cannot be ruled out.

23. Although one fact mentioned in the order dated 15.12.2022 that the applicant is also involved in the case in which the deceased was to be examined as a witness is incorrect, that was not the sole reason for

rejection of the first bail application of the applicant and it rejected by this Court after taking into consideration all the relevant factors, including the statement of the co-accused and the applicant's call detail records to prove his involvement in the conspiracy and the applicants' long criminal history.

24. So far as the grievance of the applicant regarding the delay in conclusion of trial because the proceedings of the trial have been stayed by the Hon'ble Supreme Court is concerned, the applicant would be better advised to approach the Hon'ble Supreme Court with the aforesaid grievance and this would not be a ground to grant him bail, when all the other relevant considerations weigh heavily against the applicant's claim for grant of bail.
25. In view of the aforesaid discussion, this Court is of the considered view that the applicant is not entitled to be released on bail. The second bail application is hereby **rejected**.

(Subhash Vidyarthi, J.)

Order Date: 27.10.2023

Ram.