

Court No. - 28

Case :- APPLICATION U/S 482 No. - 11555 of 2023

Applicant :- Akhilesh Paswan

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

Counsel for Applicant :- Santosh Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Santosh Kumar Srivastava, learned counsel for the applicant and learned A.G.A. for the State.

2. This petition under section 482 Cr.P.C. has been filed by accused Akhilesh Paswan with the prayer as below:

"To direct the learned courts below to release the petitioner on bail, accepting only two sureties in all the four cases, i.e. Case Crime No. 75 of 2022, under section 307 I.P.C. P.S.- Cantt. District- Ayodhya, (ii) Case Crime No. 190 of 2022, under sections 364, 302, 201, 392, 411 I.P.C. P.S.- Kotwali Nagar, District- Ayodhya, (iii) Case Crime No.78 of 2022, under sections- 3/25 Arms Act, P.S.- Cantt. District- Ayodhya and (iv) Case Crime No.241 of 2022, under section 3(1) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, P.S.- Cantt. District- Ayodhya."

3. The submissions of the applicant are that in connivance with police personnels, he has been falsely implicated in four criminal cases viz.

I. Case Crime No. 75 of 2022, under section 307 I.P.C. P.S.- Cantt. District- Ayodhya.

II. Case Crime No. 190 of 2022, under sections 364, 302, 201, 392, 411 I.P.C. P.S.- Kotwali Nagar, District- Ayodhya.

III. Case Crime No.78 of 2022, under sections- 3/25 Arms Act, P.S.- Cantt. District- Ayodhya.

IV. Case Crime No.241 of 2022, under section 3(1) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, P.S.- Cantt. District- Ayodhya.

4. The applicant has been granted bail in all the aforesaid cases by order of the High Court passed on different dates and he has been directed to furnish two sureties in each of the cases. It is submitted by the applicant that he is a poor person and therefore, he cannot arrange two sureties for each case.

5. The application is opposed by the learned A.G.A.

6. When the presence of accused is needed before the court, the courts, to secure his attendance before it, may require the person concerned to execute a bond; additionally the court may also direct the persons/accused concerned to furnish sureties. The only purpose of this exercise is to ensure and secure production of the accused before concerned forum. There is no bar that a person, who has stood surety for securing the attendance of the accused before the court concerned, cannot stand as such, in any other case irrespective of whether the accused is same or not. There may be instances where an accused is facing criminal prosecution in a number of cases. Depending on number of cases and personal circumstances of an accused, he may face difficulty in producing different sureties in each case. The court should be concerned with the reliability and competency of sureties only, unless there are circumstances or factors dissuading the court from accepting such sureties for good reasons. As observed earlier, if the surety is competent and reliable, the court concerned may accept his/her bond notwithstanding the fact that same person has stood surety in some other case.

7. The applicant relies upon a judgment of the Supreme Court given in **Hani Nishad @ Muhammad Imran @ Vikky Vs. State of Uttar Pradesh, in Petition(S) for special leave to appeal (criminal) No. 8915 of 2018, delivered on 29.10.2018.** In the aforesaid case, the accused was granted bail in 31 cases asking him to furnish two sureties each in all 31 cases. The applicant-accused expressed his inability to arrange for sureties. The Supreme Court ordered that same surety bond shall hold good for all 31 cases. It may be noted that Supreme Court did not lay down any principle of law and that a particular relief was given to the applicant as per the exigencies of a particular case. In the case in hand, the accused is required to arrange two sureties each in four cases he is facing.

8. It cannot be presumed that the court concerned shall ask for 8 different sureties. It is the discretion of the court concerned to accept the same set of sureties in all the 4 cases or ask for different sureties in any one or more of them. No hard and fast rule can be laid down in such matters. Any such attempt will be unnecessary incursion in judicial discretion of the courts. In my

view, where accused is facing a number of criminal cases, he may indeed face some difficulty in arranging for different persons to stand as surety in each one of them. In such circumstances, he may move an application before the court concerned disclosing difficulties faced by him, if any, and to permit him to furnish same set of sureties in a particular case, however, this observation cannot be construed to mean that he has right to produce same set of sureties. Moreover, it is the sweet will of surety whether he wants to stand as such in a case or not. **Neither the court nor the accused can bind a surety to stand as such in all the cases unless he himself is willing to do so.**

9. The only pre condition for accepting the surety is that they should be fit or competent, solvent and reliable.

10. The Section 441-A Cr.P.C. clarifies the position of law, which is as below.

[441-A. Declaration of sureties.- Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.]

11. The above provision indicate that there is no bar for accepting a person as surety even if he has stood as such, in some other case/cases. On the other hand, such declaration is not a meaningless requirement. This is where court's positive discretion may have a role to play.

12. In view of the above position of law, I finally dispose of this application as below.

The applicant or his surety shall move an application in the light of the observations as above apprising the court concerned of the difficulty if any, faced by him in arranging different persons as sureties and the court concerned shall decide the same applying his judicial discretion. The court concerned shall, before accepting the sureties, keep provisions of Section 441-A Cr.P.C. in mind.

13. Accordingly, this application is finally **disposed of**.

Order Date :- 28.11.2023

Sumit Kumar