

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2315 of 2024

Applicant :- Rizwan Zaheer

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

Counsel for Applicant :- Vivek Pandey, Jagriti Bardhan Rao, Nagendra Mohan

Counsel for Opposite Party :- G.A., Bal Keshwar Srivastava, Mohammad Airaj Siddiqui, Sushil Kumar Singh

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Nagendra Mohan, learned counsel for the accused-applicant, Shri Rajesh Singh, learned A.G.A. for the State, as well as Shri Balkeshwar Srivastava, learned counsel for the informant/complainant and perused the record.

2. This is third application for bail moved on behalf of the applicant- **Rizwan Zaheer** as his earlier two bail applications have been rejected by a coordinate bench of this court, however, the Hon'ble Judge, who has rejected the earlier two bail applications of the applicant, has now been transferred to some other high court.

3. This third application has been moved by the accused/applicant- **Rizwan Zaheer** for grant of bail in FIR No.02 of 2022, under sections 302 and 120-B IPC lodged at police station Tulsipur, district Balrampur, during trial.

4. Learned counsel for the accused-applicant submits that it is a case of false implication. The name of the applicant has been dragged into this case only on account of political enmity which was existing between the deceased- Firoz alias Pappu and the applicant and the murder of the deceased, namely, Firoz alias Pappu appears to be a blind murder and on account of political enmity the applicant has been made scapegoat. It is further submitted that in the FIR which has been lodged by one Afroz Ahmad alias Rinku (brother of the deceased- Firoz alias Pappu), alleging therein that on 04.01.2022 at about 10.20 p.m. when the deceased was returning to his house, two unknown persons assaulted him from behind and by such assault the deceased had sustained injuries and it appears that the murder of the deceased has been caused in furtherance of a well-planned conspiracy.

5. Highlighting above, it is vehemently submitted that the applicant or to say any other co-accused person was not named in the FIR. It is also submitted that during the course of investigation the statement of wife of the deceased-

Kahkashan and many other witnesses, namely, Musheer, Ansar, Afaq and Shakib Khan were recorded, who had imputed that the deceased was intending to contest the election of M.L.A. from Tulsipur M.L.A. constituency and the applicant was apprehending by the popularity of the deceased and also by the fact that the deceased has joined a political party of which the applicant was already a member and the deceased was staking his claim to obtain the ticket of that political party from the Tulsipur M.L.A. constituency and feeling apprehended by the same, the applicant hatched a conspiracy with the co-accused persons and entrusted the job of eliminating the deceased to one of his close associate namely, Merajul, who in turn, had also engaged co-accused- Mahfooz and in furtherance of the criminal conspiracy, these two co-accused persons- Merajul and Mahfooz had committed the offence by assaulting the deceased with iron-rods and sharp-edged-weapons resulting in his death.

6. It is vehemently submitted that the story, as cooked up by the prosecution, is highly improbable and could not be believed on the touchstone of probability. The statement of witness- Shakib was recorded on 21.01.2022 with considerable delay and the same throws a cloud of suspicion about the reliability of this witness. It is vehemently submitted that the two alleged executors of the crime, namely, Merajul and Mahfooz are shown to have been arrested by the police and their confessional statements were recorded wherein they are shown to have executed the crime in furtherance of the conspiracy hatched by the applicant and other co-accused persons. It is also submitted that the actual executors of the crime, namely, Merajul and Mahfooz have also confessed to have gone to the house of the applicant where they met with Rameez, Rizwan Zaheer (applicant), Zeba Rizwan and Shakeel who encouraged them to commit the murder of the deceased on that day itself. It is also submitted that the confessional statements of the two co-accused persons who are themselves executors of the crime may not be believed and proved by virtue of bar contained under section 26 of the Indian Evidence Act. It is further submitted that statement of one Shakib Khan is also being placed against the applicant wherein he has stated that on 01.01.2022 he had gone to extend new year greetings to the applicant at about 7.30-8.00 p.m. and he found the applicant, his son-in-law Rameez and daughter- Zeba Rizwan as well as their employee- Shakeel and 2-4 other persons who were sitting in a hall and the applicant informed them that the ticket of a particular political party was to be granted in favour of his daughter, but the deceased- Firoz alias Pappu is opposing her candidature and claiming ticket for himself and if he (deceased)

would get the ticket, the election of his daughter would be difficult and his (applicant's) career would be finished and he has decided that the deceased-Firoz alias Pappu be eliminated. On which, his son-in-law- Rameez, daughter-Zeba Rizwan and employee Shakeel consented and stated that it is required to be done for winning the election. It is vehemently submitted that statements of this star witness of the crime is highly improbable and could not be believed as nobody may believe that the conspiracy to commit a heinous offence of the nature of murder may be hatched at a place where anybody may come as a matter of right. Thus, the statement of Shakib Khan could not be believed in the facts and circumstances of the case and he appears to be a planted witness.

7. It is further submitted that it is a case where there is absolutely no evidence with regard to involvement of the applicant in the crime. The other alleged conspirators of the crime, namely, Zeba Rizwan (daughter of the applicant), Rameez (son-in-law of the applicant), Shakeel (employee of the applicant) and Mahfooz and Merajul Haque, who are real executors, have been granted bail by this court as well as by the coordinate benches of this court vide orders passed in criminal misc. bail application nos. 1339 of 2022, 4769 of 2022, 5027 of 2022, 5467 of 2022, 10315 of 2023. It is also submitted that the plea of bail of the applicant has not been found favour by the coordinate bench of this court twice only on account of criminal history of the applicant. It is vehemently submitted that criminal history of fifteen cases have been alleged against the applicant and the same has been explained in para-49 of the affidavit enclosed with the bail application and out of these fifteen criminal cases, the applicant has been acquitted in seven of such cases by the competent criminal/trial courts and the judgments of acquittal pertaining to these seven cases have been placed on record as Annexure-20, Annexure-21, Annexure-22, Annexure-23, Annexure-24, Annexure-25 and Annexure-26 of the affidavit enclosed with the bail application. In one case, pertaining to crime no.045 of 1987, final/closure report has been submitted and record of that case is not available now. One case, pertaining to Goondas Act has become infructuous due to efflux of time and in one case pertaining to section 3(2) of N.S.A. he has been exonerated by the government itself. The other criminal case bearing crime no.0406 of 2000 is with regard to the applicant as he was observing hunger strike against the atrocities of the government and in this case also the applicant has been acquitted and copy of judgment of acquittal is placed as Annexure-27 of the affidavit enclosed with the affidavit.

It is further submitted that in one case pertaining to crime no.0357 of 2003 under sections 147, 148, 323, 352, 504 and 506 IPC, police station Tulsipur, district Balrampur the applicant has never been arrested/remanded by the police and the same has been falsely shown as the criminal history of the applicant and in two criminal cases pertaining to crime nos. 093 of 2021 and 094 of 2021 the applicant has been granted bail by the competent criminal/trial courts and one case pertaining to Gangsters Act has been slapped against him on account of the instant case and the other co-accused persons of that case have already been granted bail in this case.

8. Highlighting above, it is vehemently submitted that it is true that the criminal history of an accused persons is to be considered, however, the same could not be the be all and end all of the matter and, the criminal antecedent of an accused person is required to be seen in the background of the evidence/material which is available against him in support of the accusation, while in this case, except the tainted testimony of one Shakib Khan, there is no evidence with regard to any criminal conspiracy hatched and even if the statement of Shakib Khan is taken on its face, the other alleged conspirators of the crime have been granted bail by this court as well as by the coordinate benches of this court. It is vehemently submitted that the applicant is aged about 58 years and is also suffering from various age-related ailments. He is languishing in jail in this case since 10.01.2022 and all other co-accused persons of the crime, including the real executors, have been granted bail and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A. submits that the earlier two bail applications, moved on behalf of the applicant, have been rejected by this court and against one of such rejection order the applicant has filed an SLP before the Hon'ble Supreme Court which has been withdrawn by the applicant and there is no change in circumstance since the rejection of his earlier two bail applications and having regard to the material/evidence available against the applicant he is not entitled to be released on bail.

10. Shri Balkeshar Srivastava, learned counsel for the informant/complainant, submits that in a cold-blooded-manner an innocent person has been done to death in furtherance to the conspiracy hatched by the applicant and other co-accused persons and the role of the instant applicant is distinguishable from

other co-accused persons and also that earlier two bail applications have been rejected by this court and there is no new ground available to him.

11. Section 439 CrPC is the guiding principle for adjudicating a regular bail application wherein court takes into consideration several aspects. The jurisdiction to grant bail has to be exercised cautiously on the basis of well-settled principles having regard to the facts and circumstances of each case. In ***Prahlad Singh Bhati v. State (NCT of Delhi) [Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280 : 2001 SCC (Cri) 674]***, a two-Judge Bench of the Hon'ble Supreme Court has stated the principles which are to be considered while granting bail which are as follows : (SCC pp. 284-85, para 8)

“8. 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, behaviour, 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 (sic itself) 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. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

12. It is reiterated in ***Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496]*** that it is well-settled that the factors to be borne in mind while considering an application for bail 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.*

13. For grant or denial of bail, the “nature of crime” has a huge relevancy. The key considerations which govern the grant of bail were elucidated in the

judgment of the Hon'ble Supreme Court in ***Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598*** wherein it has been observed as under :-

“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 considerations 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.”

14. Having heard learned counsel for the parties and having perused the record in the background of aforesaid legal position, it would be evident that the FIR of this case did not contain any allegation against the applicant or any other co-accused persons as in the FIR the offence is reported to have been caused by some unknown persons and an apprehension has been shown that the murder of the deceased may be the result of a conspiracy, however, there is no apprehension towards the applicant or any other co-accused persons in the FIR. It is also reflected that the deceased and the family of the applicant though were in the same political party but were having political rivalry as the deceased and the daughter of the applicant were seeking the ticket from the same M.L.A. Constituency. The case of the prosecution is that the applicant was apprehending that the deceased had recently joined the political party of which the applicant was already a member and the offence has been committed in furtherance of a conspiracy to eliminate the political rival of the applicant.

15. There cannot be any doubt that the allegations against the applicant, co-accused, Rameez, Zeba Rizwan and Shakeel are identical i.e. of hatching a criminal conspiracy to eliminate the deceased and the execution of the crime has been attributed to two co-accused persons, namely, Mahfooz and Merajul Haque. All those co-accused persons, including the executors of the crime, namely, Mahfoz and Merajul Haque have been admittedly granted bail by this

court as well as by the coordinate benches of this court. Nothing has been brought on record of this court which may suggest that any order pertaining to grant of bail to any of the co-accused persons has either been challenged or cancelled by the Hon'ble Supreme Court.

16. Coming to the criminal history of the applicant, as the earlier bail rejection orders of the applicant would sufficiently demonstrate that his plea of bail has not been accepted by the coordinate bench only on account of his criminal history. Learned counsel for the applicant has relied on the law laid down by the Hon'ble Supreme Court reported in *(2020) 11 SCC 648 (Prabhakar Tewari Vs. State of Uttar Pradesh and another)* in order to show that the criminal history of the applicant may not be the only governing force for dismissal of bail application of an accused person. This Court is also of the view that the criminal history of an accused person is bound to be considered when his plea of bail is being considered by any court but only on account of the criminal history liberty of a person may not be curtailed. The criminal history of an accused person may be relevant and may come in the aid to reject his plea of bail in the background of the material/evidence available against him viz-a-viz the accusation made against him and the evidence and material available/collected in support of this accusation and may other factors as the gravity of the offence, manner of accusation, possibility of accused appearing before the trial court and position of the applicant viz-a-viz victim or informant, however, the list is not conclusive.

17. Having considered all the facts, circumstances and evidence available before this court, this Court is not finding any reason on the basis of which facility of bail may be denied to the applicant when identically placed co-accused persons, who are also shown to be the co-conspirators, have been granted bail and so-much-so the real executors of the crime i.e. Mahfooz and Merajul Haque have also been granted bail. It is to be highlighted that the second bail application of the applicant has been rejected while one alleged executor of the crime, namely, Mahfooz has already been enlarged on bail.

18. Thus, for the reasons mentioned hereinbefore, this court is of the considered view that the applicant is not a convict and his criminal history has sufficiently been explained and, he has so far cooperated in the trial and the conclusion of the trial certainly may take sometime and as all other co-accused persons, including co-conspirators and actual executors of the crime, have already been enlarged on bail, the facility of bail may not be denied to the

applicant any further only on the basis of his criminal history when he is not a convict. Thus, having regard to all the facts and circumstances of the case, keeping in view the reasons mentioned herein before and in view the evidence/material available against the applicant, a case of bail is emerging in favour of the applicant and the facility of bail may safely be extended to him.

19. In result, this third bail application moved on behalf of the applicant is **allowed**.

20. Let the accused/applicant- **Rizwan Zaheer** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

- (i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the trial.
- (ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.
- (iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

21. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

22. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

23. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

[Mohd. Faiz Alam Khan, J.]

Order Date :- 18.3.2024 MVS/-