

Neutral Citation No. - 2025:AHC:85982

Court No. - 47

Case :- CRIMINAL APPEAL No. - 12820 of 2023

Appellant :- Nitin Rawat @ Bholu

Respondent :- State of U.P. and Another

Counsel for Appellant :- Anjani Kumar Shahwal

Counsel for Respondent :- G.A., Girijesh Kumar Gupta, Shiv Shankar Pd Gupta

Hon'ble Siddharth, J.

1. List has been revised.
2. Heard Sri Kamal Krishna, learned Senior Counsel assisted by Sri Prakhari Saran Srivastava, learned counsel for the appellant; Sri Girijesh Kumar Gupta, learned counsel for the respondents and learned A.G.A for the State and perused the material on record.
3. The appellant was granted bail by this court earlier by the order dated 21.11.2024 quoted hereinbelow :-

"Heard Sri Alok Kumar Sharma, learned counsel for the appellant; learned A.G.A for opposite party no.1; Sri G.K. Gupta, learned counsel for opposite party no.2 and perused the material placed on record.

The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant to set aside the impugned order dated 14.12.2023 whereby the Special Judge, SC/ST Act/Additional Sessions Judge, Ghaziabad, has rejected the bail application of the appellant moved by him in S.S.T. No. 3192 of 2021, Case Crime No. 518 of 2021, under Sections 302, 394, 411, 34 IPC and Section 3(2)5 SC/ST Act, Police Station Bhojpur, District Ghaziabad.

In the FIR, there is direct role assigned to the applicant of causing the offence of murder of one person.

Learned counsel for the appellant has submitted that although the appellant has been assigned definite role and he is named in the FIR, but the recovered weapon has not been matched by the Investigating Officer from the bullet recovered from the dead body of the deceased. Report in this regard has been brought on record by learned AGA, which testifies his argument. He has further submitted that before the trial court, five prosecution witnesses out of 28 have been examined. The appellant had no previous criminal history to his credit. He is in jail since 11.9.2021. The trial will take time to conclude.

Learned A.G.A. and learned counsel for the informant have supported the order passed by the court below and vehemently opposed the prayer for grant of bail to the appellant. Learned A.G.A. has submitted that subsequently the appellant has been implicated in a case under Gangsters Act. Learned counsel for the informant has submitted that co-accused, Vineet @ Golu, has absconded from the jail custody and threats are being extended by the family members of the appellant for compromising the case. He has further submitted that in the case the appellant is enlarged on bail, he will commit further crime against the informant and his family members.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the court below has not properly considered the case of the appellant. Hence, in view of above consideration, the order of rejection of bail passed by the court below dated 14.12.2023 is, hereby, set aside.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant; keeping in view uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; appellant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, Court is of the opinion that the appellant is entitled to be enlarged on bail.

Let appellant, Nitin Rawat @ Bholu, be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) The appellant 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.

(ii) The appellant shall not pressurize/intimidate the prosecution witnesses.

(iii) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.

(iv) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.

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

(vi) The appellant shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the appellant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law after the release of the appellant, if there is no other legal impediment.

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 said in this order.

The criminal appeal is allowed."

4. The above order was assailed before the Apex Court and was set aside by the following order dated 15.04.2025 passed in Criminal Appeal No. Nil of 2025 arising out of S.L.P. (C) No. 17935 of 2024 is quoted hereinbelow:-

“1. Leave granted.

2. We have heard learned counsel for the parties. The impugned order has been perused.

3. In our considered opinion, the impugned order of the High Court releasing respondent no. 1 on bail is liable to be set aside, at least, on two counts, namely, that : (I) the High Court has unfortunately made sweeping observations touching the merits of the case. There was no compelling reason for the High Court, while considering a bail application, to observe that it is a case of ‘one sided investigation by the Police’; (ii) or that the case of the accused side was ignored; more so when in that very paragraph, the High Court has further observed that it was granting bail without expressing any opinion on merits.

4. The second reason is the criminal antecedents attributed to respondent no. 1. While, it is not expedient or desirable for this court to express any opinion as to whether or not, it is a case of misuse of concession of bail granted to respondent no. 1 in the cases which were already pending against him when he allegedly committed the subject offence under Section 302 IPC. All that we expect from the High Court is to take notice of such criminal antecedents and thereafter form an opinion on merits as it may deem appropriate. It further seems that no proper assistance was rendered to the High Court in this regard.

5. Consequently, we allow this appeal. The impugned order dated 21.11.2024 is set aside and the matter is remitted to the High Court to decide the bail application afresh and in accordance with law.

6. Meanwhile, respondent no. 1 shall remain on interim bail subject to the final order to be passed afresh by the High Court. We further request the High Court to reconsider the matter as early as possible and preferably within one month.”

5. A perusal of order of Hon'ble Supreme Court shows that it has taken objections to the sweeping observations made by this court regarding the merits of this case.

6. This court finds that the court has only considered the argument raised before it by counsel for the appellant and has not recorded any conclusive finding regarding the merits of the case in its earlier order dated 21.11.2024 quoted hereinabove. Even otherwise observations made while granting bail are always tentative and do not have any binding effect on the trial court. Moreover this court had clarified in order that it has not made any comment in the merits of this case.

7. The second objection of Apex Court is that there was no compelling reason for High Court to observe that police has done one sided investigation and the case of other accused side was ignored. In the case diary, this court does not finds any statement of any accused recorded by the investigating officer, therefore, clearly the case of accused side was ignored during investigation. At least in the state of U.P. all the investigations made by police is one sided. Seldom the court comes across statement of an accused recorded in the case diary by the police. This mode of investigation by investigating officers of police in the State of U.P has been deprecated by this court number of times but in vain.

8. Final the observation of Hon'ble Supreme Court is that the criminal antecedents of applicant have not been taken into account. This court finds that the same was not brought to the notice of this court by the counsel appearing for appellant, informant or the state counsel.

9. This court has now found from the supplementary affidavit filed by counsel for the appellant that the applicant has criminal history of following cases including the present case :-

S.N.	Case Details	Status / Explanation
(i)	Case Crime No. 13 / 2011, under Sections- 307, 506 IPC and Section 3(1)(10) of SC/ST Act, P.S.- Pilakhua, District- Hapur.	Final report has been submitted.
(ii)	Case Crime No. 518 / 2021, under Sections- 302, 394, 411 IPC and 3(2) (5) of SC/ST Act, P.S.- Bhojpur, District- Ghaziabad.	Present case.
(iii)	Case Crime No. 529 / 2021, under Sections- 3/ 25/ 27 of Arms Act, P.S.- Bhojpur, District- Ghaziabad.	On bail. Implicated consequent to the alleged recovery made in the present case.
(iv)	Case Crime No. 0024 / 2022, under Section- 2/3 of Gangsters Act, P.S.- Bhojpur, District- Ghaziabad.	Subsequently imposed on the basis of the present case and Case Crime No. 13 / 2011. Bail Application No. 2964 of 2025 is pending consideration.

10. As clear from the above chart, the first Case Crime No. 13 of 2021 has ended in submission of final report. The second case is the present case. The third and fourth case always follow in case of present nature. One case is related to the recovery of arms and the other Case Crime No. 0040 of 2022 is regarding implication of applicant under Section 2/3 of U.P. Gangsters Act. Implication under the U.P. Gangsters Act is a routine affair after implication of an accused in any offence if he is common man or political opponent. Out of one case three cases have been made against the applicant, just to show his criminal history by the police.

11. Till date, total 8 witnesses have been examined during trial, out which there are 5 witnesses of fact (P.W. 1-5). P.W.-2, P.W.-3 and P.W.-4 do not allege to have seen the incident and their evidence is hearsay in nature. Informant has been examined as P.W.-1 while Kuldeep Tomar has been

examined as P.W.-5. Their testimonies are not worthy of any reliance owing to the inordinate delay in disclosure.

12. Moreover, the appellant has spent more than 3 years and 8 months in jail and the trial is proceeding at snail's pace. Out of 28 witnesses shown in the charge sheet, only 8 have been examined till date. Despite the fact that the trial was expedited by this Hon'ble Court vide order dated 29.06.2022 in A-482 No. 16870 of 2022 to be completed within a year.

13. In view of the above consideration of criminal history of the appellant, he is entitled to be enlarged on bail.

14. Let appellant, Nitin Rawat @ Bholu, be released on bail in the Session Trial No. 3192 of 2021 arising out of Case Crime No. 518 of 2021, under Sections- 302, 394, 411, 34 IPC and 3(2)5 of SC/ST Act, Police Station- Bhojpur, District- Ghaziabad, on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) The appellant 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.

(ii) The appellant shall not pressurize/intimidate the prosecution witnesses.

(iii) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.

(iv) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.

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

(vi) The appellant shall not indulge in any criminal activity or commission of any crime after being released on bail.

15. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the appellant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

16. The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law within period of one year after the release of the appellant, if there is no other legal impediment.

17. 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 said in this order.

18. The criminal appeal is allowed.

19. Registrar (compliance) is directed to communicate this order to the trial Court for necessary compliance within ten days.

Order Date :- 21.5.2025

Rohit