

Neutral Citation No. - 2025:AHC:41243

Reserved on 06.03.2025

Delivered on 19.03.2025

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43755 of 2024

Applicant :- Sandeep Shukla Alias Bauwan

Opposite Party :- State of U.P.

Counsel for Applicant :- Sanjay Kumar Dubey

Counsel for Opposite Party :- G.A.

with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 149 of 2025

Applicant :- Jitesh Jha

Opposite Party :- State of U.P.

Counsel for Applicant :- Deepak Singh, Manoj Kumar Srivastava, Sameer Srivastava

Counsel for Opposite Party :- G.A.

with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46850 of 2024

Applicant :- Avnish Dixit

Opposite Party :- State of U.P.

Counsel for Applicant :- Saurabh Chaturvedi, Sunil Kumar Pandey

Counsel for Opposite Party :- G.A.

with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47578 of 2024

Applicant :- Vivek Kumar Pandey Alias Sonu Pandey

Opposite Party :- State of U.P.

Counsel for Applicant :- Deepak Singh

Counsel for Opposite Party :- G.A.

with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47589 of 2024

Applicant :- Ali Abbas

Opposite Party :- State of U.P.

Counsel for Applicant :- Deepak Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. All the above five connected bail applications are arising out of the same FIR, therefore, all the bail applications are being disposed off by a common order.
2. Heard Sri Kamal Krishna, learned Senior Advocate assisted by Sri S.K. Dubey, learned counsel for the applicant Sandeep Shukla @ Bauwan, Sri Deepak Singh, learned counsel for the applicants Vivek Kumar Pandey @ Sonu Pandey and Ali Abbas, Sri Saghir Ahmad, learned Senior Advocate assisted by Sri Manoj Kumar Srivastava, learned counsel for the applicants Jitesh Jha and Avnish Dixit and Sri Manish Goyal, learned Additional Advocate General assisted by Sri Pankaj Saxena, learned Additional Government Advocate for the State.
3. The instant bail applications have been filed seeking release of the applicants on bail in Case Crime No. 157 of 2024, under Sections 191(2), 127(2), 324(4), 310(2), 61(2), 352, 351(2), 308(5), 329(3), 74, 111(2) (kha), 111(3), 317(3), 238(kha), 3(5) B.N.S., Police Station Kotwali, District Kanpur Nagar during pendency of the trial.
4. FIR of the present case was lodged on 28.07.2024 at 21:20 hours against 12 named and 20-25 unknown persons including applicants Jitesh Jha, Ali Abbas, Avnish Dixit and Sandeep Shukla @ Bauwan and according to the FIR on 28.07.2024 at about 9:30 AM in the morning in the absence of the informant, applicants (excluding applicant Vivek Kumar Pandey @ Sonu Pandey) after entering in the premises of informant took possession over it and when after information, informant arrived then they abused him and tried to outrage the modesty of his wife and made demand of Rs. 5 lakhs as extortion.
5. It is further mentioned in the FIR that nominated accused persons and their associates broken the lock of the door of the informant and also confined him and when police arrived then they were saved. It is further mentioned in the FIR that earlier also accused persons tried to take illegal

possession over the property in question. It is further mentioned in the FIR that in favour of the informant an injunction order has been passed by the court in Civil Suit No. 2023 of 2019.

6. Learned counsel for the applicants submitted, on the basis of general and omnibus allegations, applicants have been made accused in the present matter. They further submitted that incident is said to have taken place on 28.07.2024 at 9.30 AM in the morning but in spite of that FIR of the present case was lodged on 28.07.2024 at 21:20 hours i.e. after about 12 hours and this inordinate delay in lodging the FIR itself suggests that it is based on false and frivolous facts.

7. They further submitted, actually with regard to property in question number of civil suits are pending including Civil Suit No. 2023 of 2019, which was filed by the informant and this fact has been itself disclosed by the informant in the FIR.

8. They further submitted, suit filed by the informant is still pending and in that suit admittedly order of status quo has been passed and this fact has been admitted by the informant in the FIR itself. They further submit, the copy of the order passed by civil court has also been annexed along with affidavit filed in support of bail application filed by the applicant Avnish Dixit.

9. They further submitted, from the plaint of the Suit No. 2023 of 2019 filed by the informant, which has also been annexed along with affidavit filed in support of bail application filed by the applicant Avnish Dixit, it reflects, informant in that civil suit admitted that applicants side are having possession over the property in question, therefore, there was no occasion for applicants to take possession over the property in question and this fact clearly suggests that entire allegations levelled against the applicants are totally false.

10. They further submitted that as prima facie present dispute appears to be civil dispute and number of civil cases are pending including civil suit

filed by the informant with regard to property in question, therefore, it appears, a civil dispute is given a cloak of criminal offence.

11. They further submitted that almost with similar allegations with regard to same incident, another FIR has been lodged against the applicants by Lekhpal of the area at Case Crime No. 156 of 2024 and in that case after considering the entire facts of the case in detail, applicants (excluding applicant Avnish) have been released on bail by this Court.

12. They further submitted, however, during investigation offence under Section 111 B.N.S. has also been added but it is not a case of organized crime as prima facie, it appears to be a case of purely civil nature.

13. They further submitted that after investigation charge-sheet has been filed against the applicants. They further submitted, applicants Jitesh Jha, Sandeep Shukla @ Bauwan and Ali Abbas are not having any previous criminal history however they have also been made accused in the case relates to Case Crime No. 156 of 2024 but as already argued this case arose with the same incident and FIR of the same was lodged by the Lekhpal and in that case they have already been released on bail.

14. Learned counsel appearing on behalf of the applicant Vivek Kumar Pandey @ Sonu Pandey however submits, he is also having criminal history of one another case but his criminal history has been explained in the instant bail application.

15. Learned counsel for the applicant Avnish Dixit submitted that apart from the present case applicant is however having criminal history of 16 other cases but in 12 cases he has been made accused in the year 2024 and this fact clearly suggests that on the basis of false allegation only with intention to harass him, he has been made accused in these cases. He further submits, entire criminal history of the applicant Avnish Dixit has been explained in the supplementary affidavit dated 26.12.2024 filed in support of instant bail application.

16. He further submits, out of 16 cases criminal history of the case relates to Case Crime No. 156 of 2024 has already been disclosed during the course of argument and in that case applicant has been made accused on the basis of same incident. He further submits, in all the 16 cases excluding the case relates to Case Crime No. 156 of 2024 applicant is on bail and majority of cases relates to minor offences.

17. He further submitted, law is settled that if otherwise case of bail is made out then ordinarily merely on the basis of criminal history, bail application of an accused should not be withheld.

18. Learned counsel for the applicants further submitted that applicants Jitesh Jha, Vivek Kumar Pandey @ Sonu Pandey and Ali Abbas are in jail in the present matter since September, 2024 i.e. for last more than five months while applicants Avnish Dixit and Sandeep Shukla @ Bauwan are in jail in the present matter since July, 2024 and August, 2024 i.e. for last more than 7 and 6 months respectively.

19. Per contra, learned Additional Advocate General vehemently opposed the prayer for bail and submitted, applicant Avnish Dixit is the master mind and he got executed a power of attorney in his favour from co-accused Harendra Kumar and on the basis of that power of attorney he along with other accused persons tried to take possession over the Nazool land even after expiry of its lease.

20. Learned AAG further submits, even from the record, it reflects, applicants were having nexus and they were member of the crime syndicate, therefore, by making attempt to take possession over the property they committed the organize crime but learned AAG could not dispute the fact that with regard to property in question number of civil suits are pending including a civil suit filed by the informant of the case which is still pending and in that civil suit order of status quo has been passed and from the plaint of civil suit, it reflects, applicants side are having possession over the property, however, he further submitted,

Government was not impleaded as one of the party in the civil suit, therefore, order of injunction has been obtained by concealing material facts of the case but he fairly conceded that the Civil Suit No. 2023 of 2019 was filed by the informant of the case.

21. Learned Additional Advocate General further could not dispute the fact that with regard to same incident another FIR was also lodged by the Lekhpal at Case Crime No. 156 of 2024 in which applicants (excluding applicant Avnish Dixit) have already been released on bail.

22. Learned Additional Advocate General however further submitted that applicant Avnish Dixit is a hardened criminal and is having criminal history of as many as 18 cases and on the basis of present case he has also been made accused under the provisions of U.P. Gangsters Act but he could not dispute the fact that criminal history of 16 cases of the applicant Avnish Dixit excluding the case relates to provisions of Gangster Act have been duly explained by the applicant in the supplementary affidavit dated 26.12.2024 filed in support of his bail application and majority of cases relate to minor offences and in 12 cases applicant Avnish Dixit has been made accused in the year 2024 and almost in all the cases he is on bail.

23. I have heard both the parties and perused the record of the case.

24. However, as per allegation applicants tried to take possession over the property of informant and they also committed Dacoity and they also tried to outrage the modesty of his wife but it reflects, there is delay of about 12 hours in lodgement of the FIR of the present case.

25. Further, from the record it reflects, that long standing dispute is pending between the parties with regard to property in question and number of civil suits are also pending with regard to property in question between them including Civil Suit No. 2023 of 2019 filed by the informant Samuel Gurudev Singh and in the year 2022 order of status quo has been passed by the competent civil court. The order passed by the

competent civil court and plaint of the suit filed by the informant have been annexed along with bail application of applicant Avnish Dixit.

26. Record further suggests that informant in the plaint of Suit No. 2023 of 2019 admitted the fact that applicants side are in possession over the property and considering all these facts, the argument advanced by learned counsel for the applicants that applicants have been falsely made accused in the present matter and actually present dispute appears to be civil dispute, cannot be completely ruled out at this stage.

27. Further, however, during investigation offence under Section 111 B.N.S. has also been added but considering the facts of the case including the fact that several civil suits are pending and in one civil suit with regard to property in question, status quo order has also been passed, the argument advanced by learned counsel for the applicants that actually it is not a case of organized crime, cannot be also ruled out at this stage.

28. Further, with regard to same incident with almost similar allegation a separate FIR has also lodged against the applicants at Case Crime No. 156 of 2024, which was lodged by Lekhpal and in that case after considering the entire facts in detail (Excluding applicant Avnish Dixit), applicants have already been released on bail by this Court.

29. Further, apart from the present case and case relates to Case Crime No. 156 of 2024, applicants Jitesh Jha, Sandeep Shukla @ Bauwan and Ali Abbas were not having any previous criminal history. However, applicant Vivek Kumar Pandey @ Sonu Pandey is also having criminal history of one another case but his criminal history of solitary case has been explained in the instant bail application.

30. Further, however, from the record, it reflects, applicant Avnish Dixit is having criminal history of 18 cases including present case and case relates to provisions of U.P. Gangsters Act but it reflects, in as many as 12 cases, he has been made accused in the year 2024 and his criminal history has been explained in the supplementary affidavit filed in support of his bail

application and in all the cases except the present case and case relates to Gangsters Act case relates to case crime no. 156 of 2024 he is on bail and majority of cases were of minor offences.

31. This Court finds merit in the argument advanced by learned counsel for the applicant Avnish Dixit that if otherwise case of bail is made out then ordinarily merely on the basis of criminal history, bail application of an accused should not be withheld.

32. Further, law is settled that bail is a rule while bail rejection is an exception and bail application should not be dismissed for punitive purpose and unless proven guilty an accused is deemed to be innocent.

33. Further, applicants Jitesh Jha, Vivek Kumar Pandey @ Sonu Pandey and Ali Abbas are in jail in the present matter for last more than five months while applicants Avnish Dixit and Sandeep Shukla @ Bauwan are in jail in the present matter for last more than 7 and 6 months respectively and investigation of the case has already been concluded and after investigation charge-sheet has been filed.

34. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicants are entitled to be released on bail.

35. Accordingly, without expressing any opinion on the merits of the case, the instant bail applications are **allowed**.

36. Let the applicants **-Sandeep Shukla @ Bauwan, Jitesh Jha, Avnish Dixit, Vivek Kumar Pandey @ Sonu Pandey and Ali Abbas** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicants shall appear before the trial court on the dates fixed, unless their personal presence is exempted.

(ii) The applicants shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicants shall not indulge in any criminal and anti-social activity.

37. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicants.

38. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 19.03.2025

AK Pandey