

[Levana Suites Fire | Allahabad High Court Grants Bail To Owners, Manager Of Hotel](#)

2022 LiveLaw (AB) 514

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Dinesh Kumar Singh, J.

28.11.2022

CRIMINAL MISC. BAIL APPLICATION No. 12917 of 2022

Rahul Agarwal versus State of U.P.

Counsel for Applicant: - Nadeem Murtaza, Abhinav Singh, Anjani Kumar Mishra, Gaurav Mehrotra, Syed Aftab Ahmad

Counsel for Opposite Party:- G.A., Anil Kumar Yadav, Ashish Gulati, Prem Narayan Tiwari, Rakesh Kumar Mishra, Ruby Choudhary, Shashank Singh, Zeeshan Alvi

CRIMINAL MISC. BAIL APPLICATION No. 12924 of 2022

Rohit Agarwal versus State of U.P.

Counsel for Applicant :- Amit Jaiswal Ojus Law, Ambrish Singh Yadav, Dr. Pooja Singh, Gauri Suwan Pandey, Mrs. Komal Jaiswal Ojus L, Nandesh Verma, Vikas Vikram Singh

Counsel for Opposite Party :- G.A., Anil Kumar Yadav, Ashish Gulati, Prem Narayan Tiwari, Rakesh Kumar Mishra, Ruby Choudhary, Shashank Singh, Zeeshan Alvi

CRIMINAL MISC. BAIL APPLICATION No. 12912 of 2022

Sagar Srivastava versus State of U.P.

Counsel for Applicant: - Mrs. Komal Jaiswal Ojus L, Ambrish Singh Yadav, Amit Jaiswal Ojus Law, Vikas Vikram Singh

Counsel for Opposite Party :- G.A., Anil Kumar Yadav, Prem Narayan Tiwari, Rakesh Kumar Mishra, Ruby Choudhary, Shashank Singh, Zeeshan Alvi

Hon'ble Dinesh Kumar Singh, J.

1. Heard S/Sri J.N. Mathur, Dileep Kumar, learned Senior Advocates, assisted by S/Sri Nadeem Murtaza, Abhinav Singh, Ravi Singh, Anjani Mishra, Amit Jaiswal, Ambrish Singh Yadav, Vikas Vikram Singh, Mohit Singh, G.S. Pandey, Sudhanshu Kumar, Shikhar Neelkanth, Ms. Pooja Singh, Ms. Komal Jaiswal and Ms. Shivangi Pandey, learned counsel for the accused-applicants and S/Sri Anil Kumar Yadav, Prem Narayan Tiwari, Rakesh Kumar Mishra, Ruby Choudhary, Shashank Singh and Zeeshan Alvi, learned counsel for the complainants/victims and Sri Rao Narednra Singh, learned AGA.

2. These applications under Sections 439 Cr.P.C. have been filed seeking bail in FIR No.317 of 2022, under Sections 304, 308, 420, 465 and 471 IPC, Police Station Hazratganj, District Lucknow.

3. Initially, FIR was registered under Sections 304 and 308 IPC at Police Station Hazratganj, District Lucknow Central (Commissionerate Lucknow) on a complaint of Sub-Inspector Dayashanker Dwivedi dated 5.9.2022 posted at Police Station Hazratganj, Police Commissionerate Lucknow. Later on, Sections 420, 465 and 471 IPC have been added against the accused-applicants during the course of the investigation of the said offence. The FIR came to be registered in respect of an unfortunate incident at Hotel Levana Suites, Lucknow on 5.9.2022 at around 7 AM. The said hotel is owned by M/s Levana Hospitality Limited Liability Partnership Firm.

4. Co-accused-Pawan Agarwal and the accused-applicants, Rohit Agarwal and Rahul Agarwal are the owners/partners of the said hotel, whereas accused-applicant, Sagar Srivastava is the Manager of the aforesaid hotel. Co-accused, Pawan Agarwal has

been granted anticipatory bail by a coordinate Bench of this Court vide judgement and order dated 19.10.2022 passed in Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No.1625 of 2022.

5. The facts, in brief, are that on 5.9.2022 at 7 AM fire broke out in the Hotel Levana Suites. Fire suspected to be originated as a result of short circuit of electricity in the control room where computers etc. are installed on the ground floor. The fire caused massive smoke accumulation inside the rooms of the hotel and unfortunately four persons, namely, Gurnoor Singh Anand, Sahiba Kaur alias Jasmeen, Savika Sant and Amaan Gazia alias Babi died because of asphyxia and seven persons were injured.

6. As per the allegations in the FIR, no arrangements for fire safety, emergency escape or entrance were made in the hotel and no arrangements were there for smoke to come out and also no such safety arrangement was to counter such exigencies. It is also alleged that the hotel rooms were jammed with iron grills and thus, they could not be opened for the purpose of escaping the occupants of the rooms. During rescue operation, firemen faced immense difficulty in cutting open the aforesaid iron grills in order to pave their way in. It is further alleged that the gas cylinders were kept in the hotel premises in a very unsafe and reckless manner and even within the hotel premises, arrangement of electricity was also highly mismanaged. The owners of the hotel and the managers did not make proper arrangements for fire safety and emergency exit etc. There was every likelihood of the fire being spread to neighbouring areas. It is further said that the owners and the Manager of the hotel had knowledge that such lapses and lack of arrangements would likely threaten life and safety of the people.

7. Accused-applicant Rahul Agarwal is in jail since 5.9.2022, whereas accused-applicants, Rohit Agarwal and Sagar Srivastava are in jail since 6.9.2022 respectively.

8. Accused-applicant Sagar Srivastava had joined the hotel only on 15.1.2022 on a monthly salary of Rs.82,600/- per month. Before joining the present hotel, he had been working with Hotel 'The Piccadily', Lucknow from 19.1.2019 to 10.1.2022 on the post of Corporate Sales Manager in Sales and Marketing Department. It is said that the duty timings of the accused-applicant Sagar Srivastava for general shift is 10 AM to 7 PM and Sunday is off. The fire broke on 5.9.2022 i.e. on Monday at 7 AM and he was to join his duty on 5.9.2022 at 10 AM. As per the duty chart, One Mr. Ravindra Singh was assigned the duty at night, which starts from 11 PM to 7 AM.

9. Levana Hospitality Limited Liability Partnership is a Limited Liability Partnership Firm incorporated under the provisions of the Limited Liability Partnership Act, 2008, registered with the Registrar of Companies, Kanpur with an object of carrying out business of managing the hotels. The firm has at present three designated partners namely, Pawan Agarwal, Rahul Agarwal, Rohit Agarwal and three other partners, namely, Smt. Rashmi Agarwal, Smt. Sunita Agarwal and RR Civiltech Private Limited. The firm is, inter-alia, operating one of its hotel in the name and style of 'Levana Suites Hotel' situated at 18 Madan Moham Malviya Marg, Hazratganj, Lucknow, where the fateful/unfortunate incident/accident took place on 5.9.2022.

10. On receiving information, accused-applicant, Sagar Srivastava reached to the hotel immediately and did everything possible for him to rescue the stranded guests of the hotel. It is said that as per his best knowledge, the hotel had all regulatory, statutory and necessary approvals required for running the hotel.

11. The hotel is four storeyed building having 30 rooms. On the fateful day, 19 rooms were occupied by 31 guests. 11 employees were present when the fire broke out. Four

persons, who unfortunately died, were occupying one room each (in the pair of two) on second and third floor).

12. The police after completing the investigation, has filed the charge sheet on 29.10.2022 under Sections 420, 465, 471 IPC and the cognizance has been taken on 4.11.2022.

13. Learned counsels for the accused-applicants submit that the building which houses the Hotel Levana Suites was constructed as per the lay out plan sanctioned by the Lucknow Development Authority vide Permit No.793 E dated 3.4.1985 by M/s Bansal Constructions. Later on, on certain complaints, the Lucknow Development Authority cancelled the sanctioned plan vide order dated 4.10.1986, alleging that the lay out of the office complex had been sanctioned on the land earmarked for residential purposes. M/s Bansal Constructions filed Writ Petition No.7157 of 1986 before this Court against the order dated 4.10.1986 passed by the Lucknow Development Authority. This Court, vide interim order dated 16.10.1986 stayed the order dated 4.10.1986 passed by the Lucknow Development Authority and restrained M/s Bansal Constructions from raising any further construction while permitting to complete finishing of the construction already raised. Finishing got completed as per the permission granted by this Court vide interim order dated 16.10.1986. Thereafter, on the application of M/s Bansal Constructions, the lay out plan was sanctioned by the Lucknow Development Authority vide Permit No.4374 dated 20.7.1996 with a condition that the building should be converted into a residential building within a period of six months or same shall be regularized.

14. An undertaking on behalf of M/s Bansal Construction was submitted on 20.5.1996 to convert the said building into residential complex/building. The matter was placed before the Revisional Committee of the State Government and vide report dated 30.7.2002, the Revisional Committee came to the conclusion that there was no illegality in sanction of the office complex at the time of sanction of lay out having Permit No.793 E dated 3.4.1985 and thus, there was no question of change of land use of the already constructed office complex. Vide letter dated 12.3.2003, M/s Bansal Constructions was communicated that compounding of the office complex would not be required to the extent of deviation from the sanctioned layout plan.

15. Levana Hospitality Limited Liability Partnership purchased the said building in the year 2017 and after making certain internal divisions and renovations, started running the hotel in the name and style of "Levana Suites". The said hotel had been granted license and registration by the Lucknow Nagar Nigam, Ministry of Micro, Small and Medium Enterprises, Department of Food Safety and Drug Administration and Excise Department, Government of Uttar Pradesh. The hotel was having 'No Objection Certificate' from the Fire Department dated 25.10.2017 and was periodically renewed after inspection of the hotel by the Fire Department vide its renewal certificate dated 16.2.2021 for a period of three years (from 16.2.2021 to 16.2.2024) with a note to construct additional staircase in the hotel. As per the note in the renewal certificate, the construction of an additional staircase was conducted, but due to Covid-19 pandemic, it could not be completed.

16. The hotel was having No Objection Certificate dated 17.8.2017 from the office of the Deputy Director, Electricity Safety, Government of Uttar Pradesh and thus, it is submitted that the allegation of mismanagement of electricity installation, was absolutely incorrect.

17. The accused-applicants were running the hotel business and it is submitted that there could not have been any intention to commit any offence and all due care and caution were taken to run the hotel as per the required standard operating procedure.

18. Learned counsels for the accused-applicants further submit that the invocation of offence against the accused-applicants under Sections 304 and 308 IPC are wholly erroneous. Similarly, even if the allegations in the FIR and the charge sheet are taken on their face value, no offence under Section 420 IPC would be made out. There is no allegation of forgery or use of any document as a genuine document to constitute the offence under Sections 465 and 471 IPC. It is further submitted that the hotel did have emergency doors and were functional on the date of incident and no loose cylinders were kept inside the hotel and, no individual gas cylinders were used at all in the hotel and there is a gas bank in the premises of the hotel from which the stoves are connected through a pipeline, which is situated seven meters from the main building of the hotel. The hotel was open from all four sides and it was unlikely that the fire would have spread to neighbouring areas as alleged in the FIR. It has also been submitted that at the outside of each window of the hotel, there is a ledge of 3 feet in width and after the aforesaid ledge, there is a decorative wooden louver with some metallic rods since the very inception of the hotel and no objections were raised by the Fire Department while granting the 'No Objection Certificate'. The space between the aforesaid metallic rods was sufficient for any person to move through the same.

19. Learned counsels for the accused-applicants further submit that the fire accident was an unfortunate incident and neither the accused-applicants nor the hotel Manager had any role to play either by way of act or omission. The fire alarms and sprinklers were fully functional and the sprinklers did burst after the fire breakdown, but it came to a halt when the electricity of the hotel was snapped by the authorities, shortly after the accident. It has been further submitted that there was no *mens rea*, knowledge or negligence, which can be imputed to the accused-applicants or the hotel management.

20. Learned counsels for the accused-applicants have argued with force that there was no negligence on the part of the owners or the management, and the offence cannot be stretched beyond the offence punishable under Section 304A IPC. The ingredients of Sections 304 and 308 IPC are not at all present in the present case as the accused-applicants did not have any intention or knowledge of the likelihood of the accident/incident.

21. In support of their submissions, learned counsels for the accused-applicants have placed reliance on the judgment in the case of **Shankar Narayan Bhadolkar Vs. State of Maharashtra** (2005) 9 SCC 7 to submit that Section 80 IPC protects an act done, which results in an accident or misfortune without any criminal intention or knowledge. Paragraphs 15 and 16 of the aforesaid judgement, which are relevant, are extracted herein under:-

"15. Section 80 protects an act done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution. The primordial requirement of Section 80 is that the act which killed the other person must have been done "with proper care and caution". In Bhupendrasinh A. Chudasama v. State of Gujarat [(1998) 2 SCC 603 1998 SCC (Cri) 668] it was held by this Court that where the accused shot his own colleague at close range without knowing the identity of his target, the act smacked of utter dearth of any care and caution.

16. The amount of care and circumspection taken by an accused must be one taken by a prudent and reasonable man in the circumstances of a particular case. Where the act of the accused is itself criminal in nature the protection under Section 80 is not available. If the accused pleads an exception within the meaning of Section 80 there is a

presumption against him and the burden to rebut the presumption lies on him. (See K.M. Nanavati v. State of Maharashtra [AIR 1962 SC 605: (1962) 1 Cri LJ 521]....."

22. Learned counsels for the accused-applicants have also pressed in service on the judgement in the case of **P. Chidambaram Vs. Directorate of Enforcement** (2020) 13 SCC 791 to submit that while considering the bail application, the Court is required to keep in mind the gravity of offence, which has to be gathered from the facts and circumstances of each case. Paragraph 23 of the said judgement, which is relevant, is extracted herein under:-

"23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect that is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance, while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of the charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on a case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial....."

23. Learned counsel for the accused-applicants have also placed reliance on the following judgments:-

Sushil Ansal v. State thru Central Bureau of Investigation (2014) 6 SCC 173;

Abdul Salim Shekh (Siddique) and another v. State of Maharashtra, (2014) SCC Online Bom 1773 (Paras 34, 35 and 37);

Satender Kumar Antil v. Central Bureau of Investigation and another, (2022) SCC Online SC 825 (Paras 11, 13, and 14); and

Keshub Mahindra v. State of M.P. (1996) 6 SCC 129 (Paras 20 and 22)

24. On the other hand, learned counsels representing the victims and the State have opposed the bail applications and have submitted that all the compliances/certificates, 'No Objection Certificates' and approvals have been obtained by keeping hand in gloves with the concerned authorities without the compliance on the ground. The set back of the front and rear of the hotel is not as per clause 3.4.2, Chapter III of Urban Planning and Development Act, 1973. Even after inspection by the Fire Department, the authorities did never took any action against the hotel and the accused-applicants. The hotel was running without providing an extra staircase and there were iron grills/ windows of the hotel, which were very much in the knowledge of the accused-applicants that if some day

fire breaks out, it would certainly cause bodily injury or death and, in fact what has happened on 5.9.2022 and, therefore, the offence under Sections 304 and 308 IPC has rightly been invoked against the accused-applicants besides other offences.

25. It is further submitted that it was the duty of the accused-applicants and the hotel management to take due care of the guests who come to stay in the hotel on payment. The accused-applicants have been negligent in their duty to take due care of the guests and because of their act of negligence, omission and commission, four guests died and seven others received serious injuries. Had the accused-applicants complete the statutory requirement on the ground, four lives would not have been lost and the other guests would not have received injuries. They have also submitted that the accused-applicants can not take shelter of Section 80 IPC inasmuch as they had deliberately not complied with the statutory prescription and requirements for running the hotel and, they had deliberately put the safety and life of the guests in peril. It is further submitted that the said property was not meant for hotel, but the accused-applicants in connivance with the officials/authorities, got the office complex converted into hotel and obtained licenses etc. without having necessary requirements to run a hotel and the said building is not fit to be used for hotel purposes.

26. In view thereof, learned counsels for the victim and State have submitted that since the offence, inter alia, under Sections 304 and 308 IPC are attracted, the accused-applicants should not be enlarged on bail at this stage as they are influential people and there is every possibility of them to tamper with the evidence and influence the witnesses and also interfere with the trial proceedings.

27. I have considered the submissions advanced by the learned counsel for the parties and perused the record.

29. For the sake of convenience, Section 80 IPC is extracted, which reads as under:-

“80. Accident in doing a lawful act.-*Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.*

30. The aforesaid Section protects an act done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

31. Sections 304 and 308 IPC read as under:-

“304. Punishment for culpable homicide not amounting to murder.-*Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.*

308. Attempt to commit culpable homicide.-*Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with*

imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

32. To attract the provisions of Section 304 IPC, there has to be knowledge of an accused that his act would likely cause death. For example, the case of drunken driving in an inebriated state, under the influence of alcohol would give rise to an inference that the person so driving had the knowledge that his act was likely to cause death. The fact situation in the case at hand is not comparable to a case of drunken driving in an inebriated state. The offence under Section 308 IPC may also not get attracted in the facts and circumstances of the case. However, the said question would be decided by the learned trial court at an appropriate stage.

33. I, therefore, find a little substance in the submission of learned counsels for the accused-applicants that it may be difficult for the prosecution to sustain the charge under Sections 304 and 308 IPC. There may have been some infraction of regulatory requirements to run a hotel, but that would not amount that the accused-applicants have been negligent or they failed to take due care of their guests or they had knowledge of fire accident, which would result in death/injuries to the guests.

34. Considering the aforesaid facts and circumstances of the case and also the fact that the charge sheet has already been filed and the accused-applicants are in jail since 5.9.202 and 6.9.2022 respectively, I am of the opinion that the accused-applicants are entitled to be enlarged on bail. Any observation made herein above should be treated to confine to deciding the bail applications only.

35. Let applicants **Rahul Agarwal, Rohit Agarwal and Sagar Srivastava** be released on bail in the above FIR/case crime number on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against them, in accordance with law, under Section 174A of the Indian Penal Code.

(iv) The applicants 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 Cr.P.C. If in the opinion of the trial court absence of the applicants 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 against them in accordance with law.