

Court No. - 19

Case :- BAIL No. - 4799 of 2021

Applicant :- Suraj WWW.LIVELAW.IN

Opposite Party :- State of U.P.

Counsel for Applicant :- Dileep Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the applicant and learned Additional Government Advocate for the State, through video conferencing in terms of orders issued by Hon'ble Chief Justice taking into consideration COVID-19 situation.

2. The present bail application has been filed by the applicant in case Crime No. 57 of 2021 under Sections 3/5/8 of the U.P Prevention of Cow Slaughter Act, 1955 (hereinafter referred to as Act, 1955) at Police Station- Ataria, District- Sitapur.

3. As per the version of the FIR which has been lodged by Senior Sub Inspector Sri Deepak Kumar Pandey it comes out that four persons including the applicant were arrested and from their possession two bulls, one bundle of rope, one hammer, one Ghadasa (small), one Ghadasa (big), one nail and twelve empty packets of 5 kg each were recovered. It is contended that on the basis of information received from the police informer, the police party had carefully crept up to the aforesaid persons and had heard them talking with each other in the bushes that they had slaughtered three calves and have received huge amount of money and that now they were having two bulls in their possession and planned to slaughter them too.

4. On the the basis of the said conversation which was heard by the police party, the aforesaid persons were arrested and from their possession, the aforesaid instruments which are used in cow slaughter were recovered. The two bulls were taken

possession of and sent to shelter On the basis of the same, the FIR had been lodged under the provisions of Sections 3 and 8 of the Act, 1955.

5. Learned counsel for the applicant contends that once no offence had been committed by the applicant under the provisions of the Act,1955,then mere recovery from the possession of the applicant the two bulls and other instruments would not make out a case of invocation of the provisions of the Act, 1955. It is also submitted that on the basis of such frivolous charges, the applicant is in jail since 25.02.2021 as stated in paragraph 14 of the bail application.

6. On the other hand, learned AGA submits that once the aforesaid instruments including two live bulls have been recovered from the possession of the applicant and the others, consequently it was apprehended that the applicant and others were in the process of slaughtering the bulls and on the basis of the conversation which was also over heard by the police party,a clear case of cow slaughter is made out against the applicant and hence there is no illegality and infirmity in the lodging of the FIR against the applicant and others and the applicant has, thus, legally been incarcerated in prison since 25.02.2021.

7. Heard the learned counsel for the applicant and learned AGA appearing on behalf of the State.

8. From a perusal of the FIR it is apparent that Sections 3 and 8 of the Act, 1955 have been invoked against the applicant.

9. Section 3 of the Act, 1955 reads as under:-

*"No person shall **slaughter** or cause to be **slaughtered**, or offer or cause to be offered for **slaughter**, a **cow**, bull or bullock in any place in **Uttar***

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Pradesh, anything contained in any other law for the time being in force or any usage or custom, to the contrary notwithstanding".

10. Likewise, Section 8 of the Act, 1955 reads as under:-

*Penalty. - (1) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of **Section 3** or **5** shall be guilty of an offence punishable with rigorous imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.*

11. The word 'Slaughter' has been defined in Section 2(d) of the Act, 1955 as:

' slaughter means killing by any method whatsoever and includes maiming and inflicting of physical injury which in the ordinary course will cause death'.

12. From a perusal of Section 3 of the Act, 1955 it is apparent that where a person either slaughters or causes to be slaughtered or offers or causes to be offered for slaughter a cow, bull or bullock then he would be liable for the penalty as provided under Section 8 of the Act, 1955 meaning thereby that as per definition given in Section 2(d) of the Act, 1955, killing by any method including maiming and inflicting of physical injury which in ordinary course will cause death is a *sine qua non* for invocation of Section 3 of the Act, 1955.

13. Likewise Section 8 of the Act, 1955 provides the penalty against a person who contravene or abets the contravention of the provisions of Section 3 or Section 5 of the Act, 1955.

14. In the present case, from a perusal of the FIR it clearly comes out that neither the bulls which were found in possession of the applicant had been slaughtered nor were maimed or had any physical injury. It is simply on the basis of alleged conversation which was over heard by the police party (which curiously was being carried out in the bushes by the applicant

and others) that a case under the provisions of Section 3 and 8 of the Act, 1955 has been invoked against the applicant and others.

15. As already indicated above, Section 3 of the Act, 1955 would only be attracted where certain conditions are fulfilled as specified in Section 2(d) of the Act, 1955 but in the present case mere recovery of two bulls from the possession of the applicant and others apart from the other instruments would prima facie indicate that no case under Section 3 of the Act, 1955 is made out and by the same corollary even the penalty as provided under Section 8 of the Act, 1955 could not be invoked against the applicant.

16. In this regard, this Court in the case of **Parasram Ji Vs Imtiaz** reported in **AIR 1962 ALL 22** has held more than six decades back while considering the provisions of Act, 1955 that mere preparation for slaughter of an animal is not an offence. For the sake of convenience, the judgment of **Parasram Ji (supra)** is reproduced below:-

"1. This criminal revision application, which has been filed by the Secretary of the Gohatya Nirodh Samiti of Muzaffarnagar against the acquittal in appeal of certain persons who had been convicted by a first class Magistrate of that district for an offence under Section 8 of the U. P. Prevention of Cow Slaughter Act, raises an interesting point regarding the distinction between attempt to commit an offence and mere preparation for an offence.

2. The prosecution case was that at about 6 p.m. on 29-1-1959 Head Constable Deep Chand of Police Station Titavi, being informed that some persons had collected a number of cows in a piece of waste land in the vicinity of the police station with the object of slaughtering them, proceeded to the spot along with a number of witnesses; and when he arrived there he found a cow lying on the ground tied up with rope, being held down by Sharif and Khairati accused, while Imtiaz accused stood by with a knife in his hand. Three other persons Ishtiaq, Rafiq and Hanif were also present on the spot along with a herd of 51 cows and calves.

3. The Magistrate who tried the case accepted the prosecution story in its entirety and convicted all the six of the accused for an offence

under Section 8 of the U. P. Prevention of Cow Slaughter Act. Imtiaz, Sharif and Khairati were sentenced to six months' R. I. and a fine of Rs. 200/- each, while Hanif, Rafiq and Ishtiaq were sentenced to three months' R. I. In appeal however the Additional. Sessions Judge of Muzaffarnagar found that Hanif, Rafiq and Ishtiaq were mere onlookers; while as regards Imtiaz, Sharif and Khairati he came to the conclusion that the acts attributed to them fell short of proving an attempt to slaughter the cow and amounted to nothing more than mere preparation, which would not make them criminally liable. Accordingly all six were acquitted.

4. This revision has been dismissed summarily as regards Hanif, Rafiq and Ishtiaq and has been admitted with respect to Imtiaz, Sharif and Khairati only.

5. The facts alleged by the prosecution have been accepted by both the courts below as proved and cannot be challenged in this revision. But the point that arises for determination is whether these proved facts disclose an attempt to slaughter a cow, punishable in accordance with [Section 511 I.P.C.](#), or only preparation for slaughter, which would not be punishable at all,

6. Preparation, normally speaking, consists of devising and arranging the means necessary for the commission of the offence; while attempt implies some direct move towards the commission of the offence after the preparation has been made. But there is no sharp clear-cut distinction between the two. The one shades into the other and the dividing line can only be decided with reference to the facts of each particular case.

.....

10. In the circumstances of the present case it seems to me that the learned Sessions Judge was perfectly right in coming to the conclusion that the prosecution has succeeded in proving only preparation, not attempt. **Making an animal ready for slaughter by tying it with rope and throwing it down on the ground is obviously nothing more than mere preparation for its slaughter. One could do all that and then go off and leave the animal lying on the ground, postponing the actual slaughter for an hour or two.**

Attempt to slaughter must imply some act more proximate to the actual killing. Similarly, merely arming oneself with a knife would only amount to preparation. The stage of attempt would be reached when the knife was raised or pointed at the animal with the intention of inflicting the fatal blow. This distinction is clearly brought out by illustration (c) to [Section 307 I.P.C.](#), which shows that merely arming oneself with a gun and loading it do not constitute attempt to murder, though firing the gun at the intended victim, does. I am therefore satisfied that Imtiaz, Sharif and Khairati cannot be held guilty of attempt to slaughter the cow, but only of preparation for its slaughter.

11. In the case of attacks on human beings, mere preparation by

itself may amount to an offence (under [Section 351 I.P.C.](#)); **but preparation for the slaughter of an animal is no offence.** This revision application is accordingly rejected, the acquittal of the accused being confirmed.

17. The Apex Court in the case of **State of Madhya Pradesh Vs. Narayan Singh** reported in **(1989) 3 SCC 596** has clearly held that in the commission of offence, there are four stages namely (a) intention (b) preparation (c) attempt and (d) execution. Intention and preparation done would not attract culpability.

18. For the sake of convenience, the relevant observations of **Narayan Singh**(supra) are quoted below:-

*" In the commission of an offence there are four stages viz intention, preparation, attempt and execution. The first two stages **would not attract culpability** but the third and fourth stages would certainly attract culpability".*

19. From a perusal of the FIR, it does not come out that the applicant has made any attempt to slaughter or had executed the slaughter. Thus, the culpability of the applicant under the Act,1955 is clearly not attracted. Consequently,it is prima facie apparent that Section 3 and 8 of the Act,1955 have wrongly been invoked against the applicant.

20. Another aspect of the matter is that the applicant is in jail since 25.02.2021 i.e a period of more than two and half months have been spent by the applicant in jail on the basis of certain sections which have been invoked against the applicant of the Act, 1955, which, as already indicated above would prima facie not be attracted in the said incident.

21. In this view of the matter, the Court finds the applicant fit to be enlarged on bail. Accordingly, the bail application is allowed.

22. Let the applicant, Suraj involved in Case Crime/F.I.R. No. 56

of 2021, 3/5/8 of the U.P Prevention of Cow Slaughter Act, 1955
Police Station - Ataria, District - Sitapur, be released on bail on
his furnishing a personal bond and two sureties (one should be
of his family member/near relative) each in the like amount to
the satisfaction of the court concerned with the following
conditions

(i) The applicant shall not tamper with the prosecution
evidence.

(ii) The applicant shall not threaten or harass the prosecution
witnesses.

(iii) The applicant 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 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.

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

(v) The applicant 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 CrPC (iv) argument / judgment.

(vi) If in the opinion of the trial court, absence of the applicant 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 him in accordance with law.

(vii) Since the certified copy of this order, in view of the COVID-
2019 pandemic, may not be easily available to the applicant,
the applicant may file computer generated copy of this order
from the official website of this Court and self- attested by the
learned counsel for the applicant, before the concerned
Magistrate/Court/Authority/Official.

(viii) The concerned Magistrate/Court/Authority/ Official, before
accepting such computerized copy, filed by the applicant, as

genuine, shall verify its authenticity from the official website of this Court.

(ix) Office is also directed to send a computerized copy of this order to the District Judge concerned through e-mail or the fax, as the case may be, forthwith.

23. It is provided that none of the observations made above shall be considered by the trial court and the trial shall proceed on its own merits.

24. The Court would have parted with the case after allowing the application for bail but considering the peculiar circumstances of the case, this Court finds it in the interest of justice to direct the Superintendent of Police, Sitapur to file his personal affidavit specifically adverting to the averments made in the bail application as well as indicating as to how the cognizance of Sections 3 and 8 of the Act, 1955 have been invoked against the applicant.

25. Let such a personal affidavit be filed within a period of two weeks failing which the Court may be compelled to summon the Superintendent of Police, Sitapur along with record to assist the Court.

26. List this case on 16.06.2021.

Order Date :- 17.5.2021
Pachhere/-