

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38682 of 2023

Applicant :- Bharat Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ravikant Shukla

Counsel for Opposite Party :- Deepak Dubey,G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Ravikant Shukla, learned counsel for the applicant, Sri Deepak Dubey, learned counsel for the informant and Sri Ashutosh Srivastava, learned A.G.A. for the State as well as perused the material placed on record.
3. This is the second bail application on behalf of the applicant. The first Criminal Misc. Bail Application No.27318 of 2020 has been dismissed by this Court as not pressed vide order dated 21.02.2023.
4. Applicant seeks bail in Case Crime No.344 of 2018, under Sections 147, 148, 149, 302, 307, 506 and 120-B, Police Station Sector- Nawabad, District Jhansi, during the pendency of trial.

PROSECUTION STORY:

5. The FIR was instituted by Sanchit Verma, son of Shri Sanjay Verma, stating therein that today on 21.7.2018 at about 11:00 A.M. he along with his father had gone to Court. His father had to attend his case in the Court of District Judge, Jhansi, and Civil Judge (Junior Division), Jhansi. At about 1:30 P.M., his father left the Court premises by his Pajero Sports Car No. UP 93AN 6301, which was being driven by Ravi Varma. His father was accompanied by his guards Jai Goswami and Sunil Kushwaha.
6. In the meantime, after about two minutes, it was observed that the car was being followed by a motorcycle driven by Ajay Sony. Near a temple, truck No. UP 93T 8047 was found parked along with a loader No. UP 93AT 3437. Hiding behind the said vehicles, the accused persons namely, Sonu Geda, Rinku Geda, Bobi Geda, Angad Gurjar, Prahlad Gurjar, Udham Gurjar, Rajendra Gurjar, Shivam Gurjar and Pushpendra Gurjar, came

out with firearm weapons and started firing indiscriminately at the passengers in the car, which hit the driver of the vehicle resulting in it colliding with the loader and truck. The father of the informant and the persons seated in the vehicle sustained life threatening gunshot wounds.

7. The assailants sped away on motorcycles firing in air. The injured persons were rushed to Medical College Jhansi, where they are being treated and doctors had declared Jai Goswami dead. The accused persons, namely, Rinku Geda, Sonu Geda, Sardar Singh and others, had earlier caused the death of the uncle of the informant Ajay Verma and were convicted in it. The said conviction was sustained by the High Court, Allahabad and even the writ petition filed by Man Singh was dismissed by the Supreme Court. The aforesaid accused persons had earlier on also failed in attempt to commit murder of the father of the informant several times.

8. The instant F.I.R. was instituted at police station at 09:57 P.M. the same night.

**RIVAL CONTENTIONS:
(Arguments on behalf of applicant)**

9. The applicant is not named in the FIR. The name of the applicant has come up later in the statement of two witnesses i.e. Vijay Sony and Sanjiv Gupta regarding the applicant having hatched the conspiracy to commit the murder of the father of the informant. The said statement is an afterthought and the witnesses have been roped in after legal consultation, just to get the applicant languishing in jail.

10. The Investigating Officer without conducting proper, fair investigation and in a lethargic manner, has illegally submitted the final report (charge-sheet) against the applicant also of having committed the criminal conspiracy for getting the murder of the father of the informant.

11. The said witnesses are stated to have heard the applicant and co-accused persons, namely, Sardar Singh Gurjar and Rav Raja, on 03.08.2017 at the compound of Civil Court conspiring to get Sanjay Verma eliminated. The said offence is stated to have been committed after a period of almost 1 year i.e. on 21.7.2018. The statements of the witnesses have been recorded after the offence and not during the intervening period of conspiracy and murder.

12. It is pertinent to mention here that the delay in recording the statement of the witnesses speaks volume of frivolous

prosecution of the applicant. The motive of false implication is mentioned in the said statement as both the parties carried an animosity with the applicant as he is already convicted in the murder of the uncle of the informant.

13. The 'bail' is the rule and 'jail' is an exception. The applicant is in jail since 18.10.2018. The period of incarceration being more than five years is itself a valid ground for release of the applicant that too in an offence of conspiracy only.

14. Five witnesses have already been examined and there is no tangible or credible evidence against the applicant and there is no chance of him absconding or tampering with evidence. The statement of prosecution witness Sanjeev Gupta (P.W.4) does not inspire any confidence as it is full of contractions and is filled up with embellishments.

15. The prosecution witnesses have stated that the applicant was handcuffed at the time he saw and heard them hatching the said conspiracy, which stands falsified from the facts that applicant was brought without being handcuffed as is evident from the order of the Special Judge (Gangster's Act), which has been filed as Annexure No.9 to the affidavit filed with the instant bail application.

16. The applicant is an aged person of 77 years and there is no likelihood of him repeating the offence.

17. The criminal history of twenty seven (27) cases assigned to the applicant stands explained as he has been acquitted in twenty (20) of the cases and proceedings in the case under the National Security Act have been dropped. The applicant has been enlarged on bail in three (3) cases and is convicted in the other three (3) cases.

(Arguments on behalf of State/Informant)

18. The applicant was a convicted person in Case Crime No.1463 of 2006, under Sections 147, 148, 149, 307, 302 I.P.C. and 7 Criminal Law Amendment Act vide judgement and order dated 20.8.2009. The Criminal Appeal against the said order of conviction was dismissed by this Court vide judgment and order dated 12.9.2017. An S.L.P. filed by applicant Bharat Singh was also dismissed by the Supreme Court.

19. The Government Order No.324/2023/1442/22-2-2023-17(4999) dated 12.06.2023 was passed for premature release of applicant under Section 2 of the Provisions of U.P. Prisoners Release on Probation Act, 1938 (Act 8 of 1938), as the

applicant had forged his aged to be 77 years while his actual age is about 60 years, as is evident from the voter ID card issued by the State Election Commission, Uttar Pradesh, Lucknow. The said order of remission is under challenge before the High Court and it is pertinent to add that the remission order of co-accused Man Singh Gurjar has been set-aside by this Court vide order dated 19.04.2023.

20. The applicant and his family are a bunch of hardened criminals being involved in about twenty nine (29) cases in all. The criminal history of the applicant has been filed as Annexure No.CA-7 to the Short Counter Affidavit filed with the bail application. The applicant is a previous convict in three (3) cases and in one of the cases, the conviction has been affirmed up to the Supreme Court.

21. The bail application of the co-accused Rav Raja, whose case is on the similar footing to the applicant, has been rejected by the Supreme Court vide its order dated 29.10.2021 passed in S.L.P. (Criminal) Diary No(s). 24115/2021.

22. Learned A.G.A. has also opposed the bail application and reiterated the averments of counsel for the informant.

CONCLUSION:

23. The phrase "*Bail is the rule and Jail is an exception*" underscores the principle that individuals are presumed innocent until proven guilty. In this context, "jail as an exception" refers to the situations where a person's pre-trial liberty is restricted due to specific circumstances. These exceptions might include concerns about flight risk, potential danger to the community, the likelihood of the accused tampering with evidence, or possibility of repeating offence. Essentially, while bail is generally favoured to ensure the presumption of innocence, exceptions exist when there are compelling reasons to detain someone before trial.

24. The criminal justice system is designed to maintain order, protect citizens, and ensure that wrongdoers face consequences for their actions. However, an alarming trend has emerged where hardened criminals exploit loopholes in legal proceedings, capitalize on ambiguities, procedural errors, or inadequacies in legislation to evade the full force of the law. Whether through technicalities, or delays, these individuals navigate a legal landscape that inadvertently provides them with opportunities to escape justice. The exploitation of legal loopholes undermines public confidence in the criminal justice system. Victims may feel betrayed, and communities may lose

faith in the ability of the legal framework to protect them. Additionally, this phenomenon perpetuates a cycle of crime, as criminals observe and learn from successful manoeuvres within the legal system.

25. Striking a balance between efficiency and justice remains a challenging aspect of legal proceedings. Taking case of the issue of hardened criminals exploiting legal loopholes is crucial for upholding the principles of justice and maintaining public trust in the legal system, through proactive legal reforms, technological advancements, and ongoing professional development, we can create a more resilient framework that minimizes opportunities for criminals to escape accountability. It is imperative that society remains vigilant in its pursuit of a fair and effective criminal justice system.

26. The applicant was convicted for the murder of the brother of one of the victims of the instant incident and the same is the motive for committing the instant offence. He is a previous convict in two other cases. Here the long criminal history of the applicant is an important factor which goes against him.

27. The instant case falls in the category of "exception" as mentioned in the old saying "Bail is the rule, and Jail is an exception". Hence, the bail to the applicant is declined and is, accordingly, **rejected**.

28. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously as early as possible in view of the principle as has been laid down in the recent judgments of the Apex Court in the cases of ***Vinod Kumar vs. State of Punjab; 2015 (3) SCC 220*** and ***Hussain and Another vs. Union of India; (2017) 5 SCC 702***, if there is no legal impediment.

29. 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 :- 1.3.2024

Ravi Kant

(Krishan Pahal, J.)