

A.F.R.

Neutral Citation No. - 2023:AHC:121440

Order Reserved On 16.05.2023

Order Delivered On 30.05.2023

Court No. - 79

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30712 of 2021

Applicant :- Jay Kant Bajpai @ Jay

Opposite Party :- State of U.P.

Counsel for Applicant :- Deepak Singh, Nazrul Islam Jafri (Senior Adv.), Shiva Kant Dixit

Counsel for Opposite Party :- G.A.

Hon'ble Mayank Kumar Jain, J.

1. Heard Sri Nazrul Islam Jafri (Senior Advocate) assisted by Sri Deepak Singh and Sri Shiva Kant Dixit, learned counsel for the applicant, Sri Manish Goyal, learned Additional Advocate General assisted by Sri Abhijeet Mukherjee for the State.

2. Perused the record.

3. Present bail application has been filed on behalf of the applicant Jay Kant Bajpai @ Jay in Case Crime No. 192 of 2020, under Sections 147, 148, 149, 332, 353, 333, 307, 302, 396, 412, 120-B, 34, 504, 506 of I.P.C.; Section 7 of the Criminal Law Amendment Act and Section 3/4 of Explosive Substance Act, Police Station Chaubeypur, District Kanpur Nagar with the prayer to enlarge him on bail during the trial.

4. As per the version of the prosecution, case crime No. 191/2020 u/s 147, 148, 504, 323, 364, 342, 307 IPC and Section 7 Criminal Law Amendment Act was registered at Police Station Chaubepur, District Kanpur Outer on 02.07.2020 at 23:52 PM against Vikas Dubey and 4 other named accused on the basis of First Information Report lodged by one Rahul Tiwari. He alleged that on 01.07.2020 at 12:30 PM, the accused beat him up. The accused kidnapped him and confined him in a room. He somehow escaped from there. When he reached Vikroo turn, Bela road, Vikas Dubey fired upon him indiscriminately. He did not sustain any injury.

5. In order to arrest the named accused in the aforesaid FIR, the police party led by SHO Chaubepur, Vinay Kumar Tiwari, reached Vikroo. When they reached at the gate of the house of accused Vikas Dubey, named and unnamed accused in the present F.I.R. fired indiscriminately upon the police officers with firearm weapons. In this heart wrenching incident, 8 police personnel were brutally done to death including Circle officer and 7 police personnel got serious injuries. Accused persons looted the arms from the police personnel. The first information report of the incident was lodged by Sub Inspector Vinay Kumar Tiwari, the then SHO, P.S. Chaubepur, District Kanpur Outer on 03.07.2020 at 5:30 AM against 21 named and 60-70 unnamed accused.

6. During the course of the investigation, on the basis of the statement of the main accused Vikas Dubey, it was revealed that the applicant was present in a meeting with Vikas Dubey and other accused persons in the evening of 02.07.2020 to carve out a plan to commit the murder of police persons who were scheduled to approach the slain leader Vikas Dubey to arrest him. The applicant had provided money and ammunition to the main accused Vikas Dubey. To provide safe passage to slain accused Vikas Dubey to perform journey, the applicant promised to provide vehicles after killing the police party.

7. These facts were narrated by Vikas Dubey, the main accused of Vikroo massacre, when he was being brought to Kanpur Nagar from Ujjain, where he was arrested by the Madhya Pradesh Police. He was interrogated by the Investigating Officer during his journey from Ujjain to Kanpur Nagar. The statement of Vikas Dubey was noted in the case diary by the investigating officer. Apart from this, co-accused Prashant Kumar Shukla and Vipul Dubey also stated active involvement of the present applicant in the Vikroo massacre. The statement of the applicant was also recorded by the investigating officer in which he admitted that he had provided money and ammunitions to Vikas Dubey. He also provided vehicle to him for his safe journey after the incident.

8. It has been argued by the learned counsel for the applicant that he is

innocent and he has been falsely implicated in the present case. The applicant is not named in the first information report. None of the witness referred the involvement of the applicant in the incident that happened on 02.07.2020 at Vikroo. The applicant has been made accused in the present case only on the basis of his confessional statement and the statement of co-accused Prashant Shukla which were recorded in police custody. The statements of applicant and co-accused Prashant Shukla are not admissible in evidence and they cannot be used against the applicant.

9. It is further contended that the applicant was not physically present at the place of where the incident took place. Instead he was in an engagement party in a hotel in Kanpur. When he came to know about the incident through T.V. and other sources, he himself called the police. The applicant also provided the video footage of the party to the police. The applicant had met Vikas Dubey only once or twice in parties. Apart from this he had no relation with him. It is further submitted that the applicant is a political and social worker and he did tremendous work during COVID-19 induced lockdown. Due to local rivalry, the enemies of the applicant had introduced the name of the applicant to police and applicant has been made a scapegoat in the present case.

10. It is further urged that there is no evidence available on record that the applicant entered into a conspiracy or provided any assistance to the main accused Vikas Dubey. The applicant never provided money and ammunition for Vikroo incident. There is no eye witness account to prove this fact that the applicant had gone to the house of co-accused Vikas Dubey or participated in any meeting prior to the alleged incident dated 02.07.2020. It is further submitted that nothing has been recovered either from the possession or from pointing out of the applicant relating to the aforesaid incident.

11. It is further submitted that the charge sheet against the applicant has been submitted on 01.10.2020. The applicant has criminal history of 11 cases which have been described and properly explained in para-32 of the affidavit filed in support of the bail application. Five cases were lodged by

the police against the applicant after the alleged incident. It is further submitted that identically placed co-accused Sushil Kumar Tiwari, who was also not named in the first information report, has already been granted bail by the co-ordinate Bench of this Court vide order dated 01.11.2022 passed in Criminal Misc. Bail Application No. 4093 of 2021. There is no cogent evidence against the applicant available on record, therefore, he is also entitled to be released on bail on the ground of parity. It is further submitted that applicant is languishing in jail since 20.07.2020 and that in case he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

12. Per contra, Sri Manish Goyal, learned Additional Advocate General assisted by Sri Abhijeet Mukherjee for the State has opposed the prayer for grant of bail to the present accused/applicant and argued that the historic incident is known as “Vikroo incident” in which eight police personnel were shot dead and seven received grievous injuries. The official arms were also looted in this incident. The name of the present applicant being one of the accused in the present case, surfaced in the statement of one Prashant Kumar Shukla who informed that the applicant was having cordial relation with the main accused Vikas Dubey. On his dictate the accused/ applicant visited the house of the accused Vikas Dubey in the evening of 02.07.2020 where the accused-applicant provided financial help amounting to Rs. 2 lakhs and gave 25 cartridges of the fire-arms in front of co-accused Prashant Kumar Shukla. The applicant also assured Vikas Dubey to provide vehicle for his safe journey after the incident. The accused-applicant parked his vehicle near Shivli which was intercepted by the police and one car with fabricated pass of the assembly pasted on it was recovered. The accused-applicant had full knowledge of the plan of the main accused for the commission of heinous offence to attack the police party in the intervening night of 2/3.07.2020 in village Vikroo in which 8 police personnel including Circle officer, Bilhaur were mercilessly shot dead and 7 police personnel received grievous injuries.

13. It is further contended that after the arrest of the accused-applicant,

he confessed his guilt that he had relation with the main accused Vikas Dubey and also one day before the incident i.e. on 01.07.2020, he gave Rs. 2 lakhs to him. He also gave arms and ammunitions and provided vehicle for his safe journey to his destination. This fact is also supported with the confessional statement of co-accused Prashant Kumar Shukla. It is further contended that the applicant is a habitual offender. After the investigation a charge sheet came to be filed against him.

14. It is also contended that bail applications of other co-accused namely Rekha Agnihotri and Khushi Dubey have already been rejected by this Court vide orders dated 16.07.2021 passed in Criminal Revision No. 113 of 2021 and order dated 04.10.2021 passed in Criminal Misc. Bail Application No. 14950 of 2021 respectively. It is also contended that the statement of Vikas Dubey which was recorded during his journey from Ujjain to Kanpur Nagar has also been considered in the aforesaid bail orders. It is further contended that the history of the applicant itself demonstrates that he is consistently committing heinous offences, therefore, he is not entitled for any sympathy from this Court. The accused-applicant is a hardened criminal and there is every likelihood that if the applicant is enlarged on bail, he may indulge in commission of crime and shall make his best efforts to pressurize the witnesses to depose in his favour.

15. It is further contended that so far as the bail of co-accused Sushil Kumar Tiwari is concerned, he has criminal history of four cases to his credit and he did not have any previous criminal history whereas the present accused-applicant is having criminal history since 2010 and therefore, he is not entitled to any bail on grounds of parity with the bail order passed in favour of co-accused Sushil Kumar Tiwari. It is relevant to note that parity alone would not be a ground for any accused. The accused-applicant has played different role in commission of crime as compared to the co-accused Sushil Kumar Tiwari. It is also contended that bail applications of co-accused Vinay Kumar Tiwari, K. K. Sharma and Uma Shankar Yadav @ Tanke have been rejected by this Court vide orders dated 21.09.2021 passed in Criminal Misc. Bail Application No. 48444 of 2020 and Criminal Misc.

Bail Application No. 49354 of 2020 and vide order dated 30.09.2022 passed in Criminal Misc. Bail No. 44196 of 2022 respectively. It is also submitted that this Court while dealing with the Crl. Misc. Bail Application No. 48444 of 2020 observed that the statement of main accused Vikas Dubey is an admissible evidence under Section 32 (2) of the Indian Evidence Act in which he discloses the name and the active role of the present accused-applicant in commission of the aforesaid crime.

16. It is also argued by the learned Additional Advocate General that parity can not be a sole ground to decide the bail application and the case of each and every accused is to be examined in accordance with the facts and circumstances of the case. He relied upon **Manish Vs. State of U.P., 2022 SCC OnLine All 429** and **Kripa Shnker Singh Vs. State of U.P. 2017 SCC OnLine All 852**.

17. The learned counsel for the applicant rebutted the aforesaid arguments by stating that the Investigating officer did not collect the location of applicant which could prove the fact that on the evening of 02.07.2020, the applicant had given Rs. 2 lakh and 25 cartridges of fire-arm to the co-accused Vikas Dubey. It is totally wrong to allege that the applicant had any prior knowledge of planning of the incident dated 02.07.2020. So far as the fabricated assembly pass pasted on the vehicle is concerned, this pass was pasted on the vehicle by the police after incident. It is further submitted that the co-accused Vishnu Kashyap having identical role, has already been granted bail by the co-ordinate bench of this Court vide order dated 06.05.2022 passed in Criminal Misc. Bail Application No. 45567 of 2021. It is further submitted that the criminal antecedents of the applicant were divided into two parts: eight cases registered against him after 02.07.2020 and other cases prior to the incident dated 02.07.2020. N.S.A. proceedings were very well challenged by the applicant by filing proper objection substantiated by material evidence before the N.S.A. Committee. However, the malicious act of the State has been nullified due to lapse of time.

18. The Hon'ble Supreme Court in **National Investigation Agency Vs.**

Zahoor Ahmad Shah Watali (2019) 5 SCC Page 1 has laid down matters to be considered for deciding an application for bail as follows:-

- “(i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the charge;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being tampered with; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.”*

The Hon’ble Apex Court further observed that:-

“23. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is “not guilty” of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is “not guilty” of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is “prima facie” true. By its very nature, the expression “prima facie true” would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is “prima facie true”, as compared to the opinion of

the accused “not guilty” of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under UAPA.”

The Hon’ble Apex Court further observed that:-

“27. For that, the totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is.”

19. The learned counsel for the applicant argued that the statements of present applicant and other co-accused namely main accused Vikas Dubey, Prashant Shukla and Vipul Dubey were made before the police, therefore, they are not admissible evidence.

20. The Hon’ble Apex Court in **Indresh Kumar Vs. State of Uttar Pradesh and Another** while cancelling the bail order passed by the High Court has observed that:-

“The High Court has ignored the material on record including incriminating statements of witnesses under Section 164/161 Cr.P.C. Statements under Section 161 of Cr.p.C. may not be admissible in evidence but are relevant in considering the prima facie case against an accused in an application for grant of bail in a case of grave offence.”

21. The learned A.A.G. Sri Manish Goyal while referring the above observation made by the Hon’ble Apex Court submitted that the statement recorded under Section 161 Cr.P.C. prima facie discloses the active role of present applicant in the Vikroo massacre.

22. So far as the arguments of learned counsel for the applicant that the statement of Vikas Dubey cannot be read against the applicant, because firstly it is made before a police officer and secondly the person who made such statement cannot be found to be produced in Court since he is dead, is concerned, the learned A.A.G. relied upon the observation made by Hon’ble

Apex Court in **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another (2004) 7 SCC 528**. The Hon'ble Apex Court observed that:-

“The next argument of learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contended that the High Court was justified in granting bail since the prosecution has failed to establish even a prima facie case against the respondent. From the High Court order we do not find this as a good ground for granting bail. Be that as it may, we think this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses said to be recalled are all matters to be considered at the stage of the trial.”

23. Further, learned A.A.G. contended that the statement of the main accused Vikas Dubey is a statement of a dead person who cannot be found for giving evidence. Therefore, his statement is to be considered against the present applicant under Section 32 (3) of the Evidence Act, 1872.

24. Section 32 of Evidence Act, 1872 is quoted below:-

“32- Cases in which statement of relevant fact by person who is dead or cannot be found, etc ., is relevant. —Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

1. when it relates to cause of death. —When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

2. or is made in course of business. —When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by

him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

3 or against interest of maker. —When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

4. or gives opinion as to public right or custom, or matters of general interest. —When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

5. or relates to existence of relationship. —When the statement relates to the existence of any relationship 25 [by blood, marriage or adoption] between persons as to whose relationship 25 [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

6. or is made in will or deed relating to family affairs. —When the statement relates to the existence of any relationship 25 [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

7. or in document relating to transaction mentioned in section 13, clause (a). —When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

8. or is made by several persons, and expresses feelings relevant to matter in question. —When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.”

25. Therefore, upon reading the Section 32 of Evidence Act, it is clear that the statement made by a dead person has been legally recognized and can be used in evidence even though it does not relate to the cause of his death. It is to be kept in mind that a final decision cannot be taken at this

stage since it will be considered by the trial court when making appreciation of evidence available on record.

26. In view of the above observations and legal propositions, the statement made by main accused Vikas Dubey will be considered prima facie to indicate the involvement of the present applicant in the Vikroo massacre.

27. The statement of main accused Vikas Dubey, as recorded by the Investigating Officer during transit when Vikas Dubey was arrested in Ujjain and he was being brought to Kanpur Nagar, is available in the case diary which is reproduced here-in-below:-

“मैंने अपने नजदीकी घर की औरतों रेखा अग्नीहोत्री, क्षमा पत्नी संजय दुबे उर्फ संजू, खुशी पत्नी अमर दुबे शांति देवी पत्नी रमेश को पुलिस को चोर डकैत कहकर चिल्लाने व गांव वालों को इकट्ठा करने के लिये लगा रखा था। मेरे मामा की बहु मनु पाण्डेय पत्नी सोनू पाण्डेय को भी प्लानिंग की पूरी जानकारी थी तथा फोन से सबको सजग कराने व सूचना देने के लिये मैंने बता रखा था। इसके बाद मैं भागकर शिवली चला गया था इस दौरान मेरे अति नजदीकी जयकान्त उर्फ जय बाजपेई पुत्र लक्ष्मीकान्त बाजपेई नि० बरहानगर और प्रशान्त शुक्ला उर्फ डब्लू नि० आर्य नगर कोहना ने गाडी व पैसा देकर मेरी मदद की उन्हें भी मेरी प्लानिंग की कुछ कुछ जानकारी थी। जय बाजपेई से मैंने कारतूस भी लिया था। वहां से फिर बचते बचाते उज्जैन महाकाल मन्दिर आ गया था। सड़क पर जे०सी०बी०लगाकर जाम करने के लिये मैंने सुल्तान अहमद नि० कस्बा चौबेपुर की जे०सी०बी० जो मेरे यहां करीब डेढ़ माह से काम कर रही थी को रात में करीब 12 बजे अपने मामा राजाराम उर्फ रामकुमार पाण्डेय को भेजकर ड्राइवर राहुल पाल से मंगवाया था और सड़क पर खड़ी करके सड़क अवरुद्ध करा दिया था ताकि पुलिस एका एक हमारे घर तक ना आ सके।”

28. The statement of the co-accused Prashant Shukla, who specifically stated about the involvement of the present applicant in the incident dated 02.07.2020, recorded by the Investigating Officer is reproduced here-in-below:-

“ब्यान अभियुक्त प्रशान्त शुक्ला उर्फ डब्लू पुत्र श्रीकृष्ण कान्त शुक्ला निवासी 8/119 आर्य नगर थाना कोहना कानपुर नगर उम्र करीब 47 वर्ष ने पूछने पर बताया कि साहब वर्ष 2005 में मेरी शादी ग्राम विकरू में ओम प्रकाश दुबे की पुत्री रंजना दुबे से हुई तभी से मेरी जान पहचान विकास दुबे से हो गई थी क्योंकि विकास दुबे मेरी पत्नी के परिवार का ही है विकास दुबे कई बार जेल गया तो मैंने इसकी मदद की दिनांक 02.07.2020 को वाट्स अप काल द्वारा विकास दुबे ने मुझे बताया कि मुझे पुलिस वालों को ठिकाने लगाना है तुम मेरी मदद करो तथा जयकान्त बाजपेयी को अपने साथ लेकर मेरे गांव आ जाओ तो मैं जयकान्त बाजपेयी को लेकर दिनांक 02.07.2020 को शाम के समय ग्राम विकरू गया था वहां पर जयकान्त बाजपेयी ने विकास दुबे 2 लाख रुपये व 25 कारतूस दिये थे मैंने भी अपने पास से 50 हजार रुपये

विकास दुबे को दिये थे ताकि जरूरत पड़ने पर मुकदमा आदि में वकील आदि को देने में काम आ सके, विकास दुबे ने हम बताया था कि पुलिस वालों ने मुझे पकड़ने का प्लान बनाया है परन्तु जैसे ही पुलिस वाले मेरे घर पर आयेगे मैं उनको मौत की नींद सुला दूंगा एक को भी जिंदा नहीं जाने दूंगा तब मैंने कहा था कि ठीक रहेगा हम से जो मदद होगी हम करेंगे तो विकास दुबे ने कहा कि जब मैं खबर भेजूंगा तो जयकान्त बाजपेयी की तीनों गाड़ियां लेकर जहां मैं बताऊंगा वहां आ जाना हमने कहा कि ठीक है हम आ जायेगे। इसके बाद हम लोग वहां से चले आये थे। अगले दिन सुबह खबर मिली थी कि विकास दुबे ने 8 पुलिस वालों के मौत के घाट उतार दिया है उसके बाद दिनांक 04.07.2020 को मुझे सूचना मिली थी विकास दुबे ने जयकान्त बाजपेयी की गाड़ियां शिवली में मंगाई है तो मैंने जयकान्त बाजपेयी को पूरी बात बताई जयकान्त बाजपेयी गाड़ियां लेकर विकास दुबे व उसके गैंग को लेने जा रहा था कि पुलिस की सक्रियता के चलते वह गाडी कानपुर नगर से बाहर नहीं ले जा पाया तथा गाड़ियों को डर के मारे काकादेव क्षेत्र में छोड़कर चला आया था साहब गलती हो गयी जो मैंने विकास दुबे का षडयन्त्र में साथ दिया।”

29. Further the statement of the co-accused Vipul Dubey was also noted down by the investigating officer about the active involvement of the present applicant in the aforesaid incident. The statement of co-accused Vipul Dubey is reproduced here-in-below:-

“ विकास दुबे हमारे खानदान के थे. मीटिंग में तय योजना के अनुसार विकास दुबे ने असलाह कारतूस व बमों की व्यवस्था की व हम सभी लोगों को असलाह कारतूस उपलब्ध कराये गये मैंने विकास दुबे से मिलते हुये व कारतूस असलाह व पैसे देते हुये विकास पण्डित जी के परिचित जयकान्त बाजपेयी, प्रशान्त शुक्ला, अरविन्द तिरवेदी उर्फ गुड्डन व सुशील तिवारी योजना में शामिल रहे। असलाह व पैसे व कारतूस उपलब्ध कराये तथा भविष्य में भी पुरी सहायता करने का वचन दिया था। अक्सर जयकान्त बाजपेयी, प्रशान्त शुक्ला, अरविन्द तिरवेदी उर्फ गुड्डन व सुशील तिवारी विकास दुबे के पास आया करते थे तथा यह चारों लोग विकास दुबे के रूपों को ब्याज पर लोगों को दिया करते थे। इन चारों लोगों की विकास दुबे से बहुत अधिक घनिष्टता थी। यह चारों लोग उस समय मौजूद नहीं थे जब हम लोगों द्वारा पुलिस वालों पर फायरिंग की जा रही थी।”

30. The confessional statement of the applicant is reproduced here as under:-

“ब्यान अभियुक्त जयकान्त बाजपेयी पुत्र स्व० लक्ष्मीकान्त बाजपेयी निवासी 111/478 ब्रह्मा नगर थाना नजीराबाद जनपद कानपुर नगर उम्र करीब 37 वर्ष ने पूछने पर बताया कि हम 05 भाई हैं मेरे माता पिता का स्वर्गवास हो गया है मेरा मो०नं० 9336249793 है मेरे पास रिवाल्वर का लाइसेन्स है जो मैंने 2008 में लिया था। मेरे पिता जी के हिस्से में 06 बीघा जमीन आती है। पहले मैं टायर पेन्चर की दुकान करता था वर्ष 2013 में मेरी मुलाकात प्रशान्त शुक्ला उर्फ डब्लू के माध्यम विकास दुबे से हो गई थी विकास दुबे ने मुझे कुछ पैसा देकर ब्याज पर पैसे देने काम शुरू करा दिया था, विकास दुबे को मैं 3 प्रतिशत पर ब्याज देते था तथा लोगों से 10 प्रतिशत का ब्याज लेते था इसके बाद मैंने कमेटी डालनी शुरू कर दी थी जिससे मेरा काम ठीक ठाक चल निकला जिससे मैंने 04 मकान अशोक नगर में खरीदे तथा जिसके अलावा मेरे करीब 56 प्लॉट है जो करीब डेढ़ करोड की कीमत से ज्यादा के है उसके बाद मेरा विकास दुबे से लगातार मिलना जुलना रहा हम लोग फोन से भी आपस में बात करते थे

परन्तु वाटसकाल या चैट से ज्यादा बाते करते थे दिनांक 01.07.2020 को विकास दुबे का मेरे पास फोन आया कि कुछ पैसे व कारतूस लेकर मेरे पास आ जाओ मैं दिनांक 02.07.2020 को परशान्त शुक्ला उर्फ डब्बू के साथ ग्राम विकरु गया था जहां पर विकास दुबे हमे मिला विकास दुबे ने हमें बताया कि पुलिस मुझे बहुत परेशान कर रही है मुझे पुलिस का काम तमाम करना है तो हमने कहा कि ठीक रहेगा। एक बार पुलिस से भिड गये तो फिर हमारी दबंगई पूरे जिले में चलेगी। तो मैंने विकास दुबे को 2 लाख रूपये नगद व 25 कारतूस रिवाल्वर के दिये थे उसी दौरान विकास दुबे ने मुझे व डब्बू को बताया था कि आप दोनों को घटना के बाद जब भी मैं सूचना भेजूंगा अपनी गाडी भेजनी होगी ताकि हम सुरक्षित निकल सके मेरे पास एक गाडी ऑडी जिसका नम्बर UP 78FY 9555 जो मैंने प्रमोद कुमार पुत्र कन्हैया लाल विश्वकर्मा निवासी 16/18 न्यू ईदगाह कालोनी थाना नवाबगंज के नाम से निकाली थी तथा दूसरी गाडी फार्चनर नं० UP 78 EW 7070 है जो मैंने राहुल पुत्र इन्दरपाल नि० 193/243 सकरपुर चक (किसान नगर) थाना सचण्डी कानपुर नगर के नाम से निकाली थी तथा तीसरी गाडी वरना जिसका नम्बर UP 78 FC 7070 है जो मैंने कपिल सिंह चौहान पुत्र चन्द्रभान सिंह नि० III ए/24 अशोक नगर थाना नजीराबाद के नाम से निकाली थी तीनों गाडियों की किश्त मैं स्वयं भरता हूँ तथा तीनों मेरे पास ही रहती है। इन गाडियों से विकास दुबे अक्सर घटना में जाया करता था घटना के बाद दिनांक 04.07.2020 को डब्बू के माध्यम से मेरे पास सूचना आई थी कि विकास दुबे व उसके साथियों को शिवली से दिल्ली तक छोड़ना है जिसका कारण मैं इन गाडियों को अपने ड्राइवर से चलवाकर विकास दुबे के पास ले जा रहा था कि पुलिस की सक्रियता देखकर मैं घबरा गया तथा जल्दबाजी में मैंने तीनों गाडियों काकादेव क्षेत्र में विजय नगर चौराहा के पास नम्बर प्लेट पलट करके लगा दी थी ताकी कोई गाडियों को पहचान न पाये साहब मुझे इस घटना की पूरी जानकारी थी मैंने इस कार्य में विकास दुबे की मदद की है मुझसे गलती हो गई है।”

31. Perusal of the statement given by the main accused Vikas Dubey to the Investigating Officer during his journey from Ujjain to Kanpur Nagar discloses that Vikas Dubey referred the present applicant as his close associate who provided money and vehicles to assist him to commit the incident dated 02.07.2020. Similarly, the statement of co-accused Prashant Shukul also reveals that Vikas Dubey sought his assistance and asked him to come to his village along with the present applicant Jai kant Vajpayee. He reached village Vikroo accompanied by the present applicant in the evening of 02.07.2020 where the present applicant gave Rs. 2 lakh and 25 cartridges to Vikas Dubey. Vikas Dubey directed that the vehicles of present applicant be made available after the incident. The co-accused Vipul Dubey also stated before the Investigating Officer that the present applicant along with Prashant Shukla, Arvind Trivedi @ Guddan and Sushil Tiwari were involved in the planning of the

incident. Money and ammunitions were provided by them. The present applicant was a frequent visitor of Vikas Dubey in relation to money lending business. All these four accused persons were very close to accused Vikas Dubey.

32. On the basis of the aforesaid statements, prima facie it transpires that the present applicant was well known and was a trusted person of Vikas Dubey. The main accused Vikas Dubey invited him along with the other accused to attend a meeting in the evening of 02.07.2020 for committing conspiracy and to further plan to commit the incident known as Vikroo massacre. During this meeting, the present applicant provided money amounting to Rs. 2 lakh and 25 cartridges to the main accused Vikas Dubey to be used in the crime. Further the present applicant promised Vikas Dubey he would be available outside his house to provide him vehicles for his safe passage after the incident to his next destination.

33. The learned counsel for the applicant submitted that since the role of the applicant is identical to the co-accused Sushil Kumar Tiwari who has been granted bail vide order dated 01.11.2022 by this Court passed in Criminal Misc. Bail Application No. 4903 of 2021, therefore the applicant is also entitled to be released on bail on the grounds of parity. It is submitted that the co-accused Sushil Kumar Tiwari was also not named in the F.I.R. and he was also not present physically at the place of occurrence at the time of incident.

34. **In Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana, 2021 SCC onLine SC 353**, a two judge Bench of Supreme Court has held that the High Court while granting bail must focus on the role of the accused in deciding the aspect of parity. This Court observed:

“26....The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on

the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”

35. In view of the above observations made by the Hon'ble Apex Court and keeping in view the fact and circumstances of the case and the complicity of the accused about his involvement in the crime, the present applicant is not entitled for releasing him on bail on the ground of parity.

36. Learned counsel for the applicant vehemently argued that so far as criminal history of the present applicant is concerned, it is explained through rejoinder affidavit that in some of the cases the applicant has been granted bail, in one case final report has been submitted and some matters are still pending consideration before the court concerned.

37. Learned A.A.G. Sri Manish Goyal has submitted that applicant has criminal history of as much as 14 cases to his credit from the year 2010 including the cases of the nature of heinous offences including Section 395, 302, 307 I.P.C., Gangster Act, Explosive Act and N.S.A. had also been imposed against the applicant. It demonstrates that the applicant has been involved in certain heinous offences and he is a hardened criminal. If he is released on bail it will give him an opportunity to temper the witnesses . The criminal history of the applicant is to be taken into consideration while releasing him on bail.

38. Criminal history of the present applicant is brought on record through a supplementary counter affidavit by the State which is reported by Inspector of Police, PS Chaubepur Commissionerate, District Kanpur Nagar

39. In view of judgment of Hon'ble the Apex Court in the case of **Neeru Yadav vs. State of U.P. and another (2015) 3 SCC 527**, criminal antecedents of the accused cannot be ignored while deciding bail application, discretionary powers of Courts to grant bail must be exercised in a judicious manner in case of a habitual offender.

40. In **Neeraj Yadav Vs. State of U.P. (2016) 15 SCC 422**, the Hon'ble Apex Court has held as under:-

“15.This being the position of law, it is clear as cloudless

sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A historysheeter involved in the nature of crime which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.”

41. It is argued on behalf of State that the co-accused Sushil Kumar Tiwari against whom the present applicant is claiming the parity had criminal history of four cases while the applicant has a criminal history of 14 cases to his credit. Therefore, the applicant cannot claim parity on this score also.

42. In view of the above, the criminal history of the applicant, which includes the offenses of heinous nature, is also taken into consideration.

43. Learned A.A.G. Sri Manish Goyal submitted that the Vikroo massacre took place within the limits of notified area under the U.P. Dacoity Affected Area Act and the provision under Section 10 of the Act be also taken into consideration.

44. The relevant portion of the Act is quoted below:-

“10.Special provisions regarding bail- *Notwithstanding anything contend in the code of criminal procedure, 1973, no person accused or convicted of a scheduled offence shall, if in custody be released on bail or on his own bonds unless*

(a) The prosecution has given an opportunity to oppose the application for bail, and

(b) Where the prosecution opposes the application for bail, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.....”

45. Therefore, it is concluded that on the basis of above discussion, it is clear that the nature of the offence and amount of culpability is serious and heinous. The applicant has criminal history of cases of heinous nature to his credit. The applicant is actively involved in the incident in which eight police personnel including the Circle Officer, Bilhore, were done to death mercilessly and seven others police personnel received grievous injury. The applicant actually assisted the main accused Vikas Dubey by providing him Rs. 2 lakh and 25 cartridges to be used in the incident. Further, the applicant

[17]

also promised and provided vehicles to slain accused Vikas Dubey for his safe journey to his next destination after committing one of the most heinous crimes. Therefore, I do not find any sufficient reason to allow the bail application of the present applicant. The bail application of the present applicant Jay Kant Bajpai @ Jay is **rejected**.

46. Any observation made above shall not be treated as any finding on the merit and shall not prejudice the trial.

Order Date:- 30.05.2023 /A.K.T.