

AFR

Neutral Citation No. - 2024:AHC:83379

Judgment Reserved on 7.5.2024.

Delivered on 9.5.2024.

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3446 of 2023

Applicant :- Man Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Vishnu Murti Tripathi

Counsel for Opposite Party :- G.A.,Sunil Choudhary

Along with

1. Case :- CRIMINAL MISC. BAIL APPLICATION No. - 55585 of 2022

Applicant :- Santlal

Opposite Party :- State of U.P.

Counsel for Applicant :- Kripa Shanker Pandey, Mohammad Rizwan, Pankaj Kumar Gupta

Counsel for Opposite Party :- G.A.,Sunil Choudhary

2. Case :- CRIMINAL MISC. BAIL APPLICATION No. - 56379 of 2022

Applicant :- Dharmendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Pawan Shukla, Vishnu Murti Tripathi

Counsel for Opposite Party :- G.A.,Sunil Choudhary

3. Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10504 of 2023

Applicant :- Dilip Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Rizwan Sayed, Sushil Kumar Pandey, Ziya Uddin

Counsel for Opposite Party :- G.A.,Rajesh Kumar Srivastava,Sunil Choudhary

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard Sri Vishnu Murti Tripathi, learned counsel for applicant-Man Singh, Sri Kripa Shankar Pandey, learned counsel for applicant-Santlal, Sri Pawan Shukla, learned counsel for applicant-Dharmendra, Sri Sunil Chaudhary, learned counsel for informant and Sri Roshan Kumar Singh, learned A.G.A. for State.
2. None appeared on behalf of applicant-Dilip Kumar.
3. Applicants are seeking bail arising out of Case Crime No.191 of 2022 under Sections 307, 352, 326A/34 and 420 of I.P.C. Police Station-Charwa, District-Kaushambi.
4. All the bail applications are arising out of same case crime number, therefore, decided by this common order.
5. Present case is arising out of an occurrence of an Acid attack.
6. Victim was working as a Bank Manager. On day of occurrence while she was travelling, two unknown persons came on a motorcycle and threw acid on her. A prompt F.I.R. was lodged by her father.
7. During investigation, name of applicant and other co-accused came into light that they all act as Brokers in the bank to facilitate sanctioning of loan etc and when the victim while exercising her duties as Bank Manager rejected some of loan applications, she was pressurized. However, when she did not succumb to their pressure it led her to suffer an acid attack.
8. It has been brought on record that some of co-accused have been granted bail mainly on ground that their names were

disclosed in confessional statement of co-accused. However, bail application of one of co-accused namely Mohd. Azam was rejected by co-ordinate Bench of this Court vide order dated 20.2.2023, Neutral Citation No.2023:AHC:41353.

9. According to prosecution story, all accused persons hatched a conspiracy to commit crime of acid attack to deter the victim to succumb to pressure and to pass loan illegally. Victim has submitted various applications that not only she, but her family was pressurized to withdraw the case. However, it appears that cognizance has not been taken of it. Documents in this regard are being part of counter affidavit which is filed by son of informant.

10. Co-ordinate Bench while rejecting bail application of co-accused Mohd. Azam has also taken note of injury report of victim, CCTV Footage, call detail reports as well as criminal history of twenty cases registered against him.

11. Arguments have been raised by counsel for applicants that motive assigned was not supported by any cogent evidence. Theory of conspiracy also does not have support of any cogent evidence. There was no eye witness that applicants were involved in actual crime, other co-accused have already been granted bail and that victim has not suffered any grievous injury.

12. Learned counsel for the applicants further submits that applicants are languishing in jail since 17.8.2022 and 18.8.2022 respectively i.e. about one year and eight months and there is no likelihood of early disposal of trial and the applicants undertake that if enlarged on bail, they will never misuse their liberty and will co-operate in the trial.

13. Learned A.G.A. as well as learned counsel for informants have vehemently opposed the bail applications and referred documents placed on record by way of above referred counter affidavit, wherein there is discharge summary of the victim that she was given treatment at a hospital with history of chemical burn for surgical management in the Department of Plastic Surgery of Apollo Hospital.

14. Legislature has taken note that incidents of acid attack frequently occurred, therefore, in the year 2013, Section 326A of IP.C. was inserted by an Act 13 of 2013 and for reference same is mentioned hereinafter:

"S.326A : Voluntarily causing grievous hurt by use of acid, etc.

[Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim;

Provided further that any fine imposed under this section shall be paid to the victim.]"

15. As referred above, aforesaid section not only makes a crime where due to acid attack there is some damage to body of victim, but is also includes an act if undertaken with intention of causing or with the knowledge that accused is likely to cause such injury or

hurt. Aforesaid section provides that in case of conviction, punishment of imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine could be awarded. It further provides that such fine shall be paid within reasonable time to meet the medical expenses for treatment of the victim. It further provides that any fine imposed under this section shall be paid to the victim.

16. In this regard, few paragraphs of a recent judgement passed by Supreme Court in the case of *Shivani Tyagi Vs. State of U.P. & Ors, 2024 INSC 343*, would be relevant wherein while considering challenge to suspension of sentence in a burn acid attack, the Supreme Court has observed (as per Hon'ble Rajesh Bindal, J), in its paras 9 to 11 that:

"9. This court had been taking the offence of acid attacks, which are on increase, seriously. It is even to the extent of regulating the sale of the acid with stringent action so that the same is not easily available to the people with perverse mind. Observations made by this court in paragraph 13 of Parivartan Kendra vs Union of India and Others, (2016) 3 SCC 571 being appropriate is extracted below:

"13. We have come across many instances of acid attacks across the country. These attacks have been rampant for the simple reason that there has been no proper implementation of the regulations or control for the supply and distribution of acid. There have been many cases where the victims of acid attack are made to sit at home owing to their difficulty to work. These instances unveil that the State has failed to check the distribution of acid falling into the wrong hands even after giving many directions by this Court in this regard. Henceforth, stringent action be taken against those erring persons supplying acid without proper authorisation and also the authorities concerned be made

responsible for failure to keep a check on the distribution of the acid."

10. In *Suresh Chandra Jana vs State of West Bengal and Others*, (2017) 16 SCC 466, while rejecting the acquittal of an accused as ordered by the High Court in an acid attack case, this Court observed that the acid attack has transformed itself to a gender-based violence, which causes immense psychological trauma resulting in hurdle in overall development of the victim. Paragraph 30 thereof is extracted below:

"30. At the outset, certain aspects on the acid attack need to be observed. Usually vitriolage or acid attack has transformed itself as a gender based violence. Acid attacks not only cause damage to the physical appearance of its victims but also cause immense psychological trauma thereby becoming a hurdle in their overall development. Although we have acknowledged the seriousness of the acid attack when we amended our laws in 2013 [The Criminal Law (Amendment) Act, 2013 (13 of 2013).] , yet the number of acid attacks are on the rise. Moreover, this Court has been passing various orders to restrict the availability of corrosive substance in the market which is an effort to nip this social evil in the bud. [Parivartan Kendra v. Union of India, (2016) 3 SCC 571 : (2016) 2 SCC (Cri) 143] It must be recognised that having stringent laws and enforcement agencies may not be sufficient unless deep-rooted gender bias is removed from the society."

11. In another case reported as *State of Himachal Pradesh and Another vs Vijay Kumar alias Pappu and Another*, (2019) 5 SCC 373, regarding acid attack on a young girl of 19 years, in which this Court observed in paragraph 13 thereof, that the victim had suffered 16% burn injuries and that such a victim cannot be compensated by grant of any compensation. Paragraph 13 is thereof extracted below:

"13. Indeed, it cannot be ruled out that in the present case the victim had suffered an uncivilised and heartless crime committed by the respondents and there is no room for leniency which can be conceived. A crime of this nature does not deserve any kind of clemency. This Court cannot be oblivious of the situation that the victim must have suffered an emotional distress which cannot be

compensated either by sentencing the accused or by grant of any compensation.”

17. I have considered the above mentioned rival submissions in referred factual and legal background and in view of established principle of jurisprudence of bail i.e 'bail is rule and jail is exception' as well as relevant factors for consideration of a bail application such as (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 accusation; (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 influenced; (viii) danger of course, of justice being thwarted by grant of bail etc. and that an order to grant or not to grant bail must assigned reasons (see **Deepak Yadav Vs. State of U.P. (2022) 8 SCC 559, Manoj Kumar Khokar Vs. State of Rajasthan and Anr (2022) 3 SCC 501, The State of Jharkhand Vs. Dhananjay Gupta @ Dhananjay Prasad Gupta: Order dated 7.11.2023 in SLP (Crl) No.10810/2023 and Shiv Kumar Vs The State of U.P. and Ors: Order dated 12.9.2023 in Criminal Appeal No.2782 of 2023; Ramayan Singh Vs. The State of U.P. and Anr, 2024 SCC Online SC 563**), therefore, I am of considered opinion that present is not a fit case to grant bail to applicant.

18. In the aforesaid circumstances considering nature and manner of occurrence, where victim being a lady has suffered acid attack and is still recovering from scars of it as well as taking note of

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other factors of law in regard to bail which is mentioned above, that she has to pay cost for not being succumbed to pressure to undertake an illegal act to sanction such loan applications which were not qualified for it. The Court also takes note that this Court has transferred the trial to Judgeship at Allahabad. The Court also takes note of evidence collected during investigation about purchase of acid and actual involvement of some applicants and supporting role assigned to other applicants. There are CDR details as well as all applicants and other co-accused are part of large conspiracy. The Court also takes note that certain relevant facts were not brought into notice of co-ordinate Bench, which have granted bail to some co-accused.

19. Bail applications are accordingly **rejected**. However, learned Trial Court is directed to take all endeavour to conclude the trial expeditiously and in case statement of victim has not been recorded till date, it may be recorded within a period of six months from today. Victim is permitted to avail protection under Witness Protection Scheme, 2018.

20. Registrar (Compliance) to take steps.

Order Date:-9.5.2024

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