

Court No. - 1

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2120 of 2022

Applicant :- Mohammad Azam Khan

Opposite Party :- The State Of U.P. Thru. Prin. Secy. Addl. Chief Secy. Home Lko.

Counsel for Applicant :- Anjani Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Ramesh Sinha, J.

- (1) The present bail application has been nominated by Hon'ble the Chief Justice to this Bench vide order dated 07.03.2022, hence the Registry has placed the instant bail application before this Court today.
- (2) The instant first application for bail under Section 439 Cr.P.C. has been preferred by applicant, **Mohammad Azam Khan**, seeking to enlarge him on bail in FIR/Case Crime No. 79 of 2019, under Sections 500, 505 I.P.C., Police Station Hazratganj, District Lucknow.
- (3) Heard Shri Imran Ullah, learned Counsel for the applicant and Shri Vinod Kumar Shahi, learned Additional Advocate General assisted by Shri Anurag Verma, learned Additional Government Advocate appearing on behalf of the State,
- (4) Learned Counsel for the applicant has argued that an F.I.R. was lodged by one Allama Jamir Naqbi, who is said to be a writer & critic and opponent to the applicant, against the applicant on 01.02.2019 at 04:11 a.m., alleging that the applicant, while sitting in his office at room no. 101-102 situated in Mukhya Bhavan (Vidhan Bhawan), Police Station Hazratganj, district

Lucknow, had intentionally wrote certain letters dated 04.08.2014, 05.08.2014, 06.08.2014, 07.08.2014, 08.08.2014, 11.08.2014 on the letter pad of the office and also wrote a letter dated 12.08.2014 on a blank paper bearing his signatures at the footer, defaming R.S.S., a National Political Party, namely, B.J.P. and Maulana Sayyed Kalbe Jawwad Naqbi, which was published in National Newspaper and various T.V. national news channels by the pressure and high end networks of the applicant.

- (5) It has been argued by the learned Counsel for the applicant that for the alleged incident pertains to the year 2014, the aforesaid F.I.R. has been lodged on 01.02.2019 i.e. almost after five years without explaining inordinate delay. His submission is that the F.I.R. has been registered in utter ignorance to the bar of limitation as provided under Section 468 of Cr.P.C. inasmuch as the offences alleged against the applicant entail a maximum imprisonment of upto 3 years and, as such, the limitation period as provided under Section 468 Cr.P.C. for the offence of three years is only till three years.
- (6) Learned Counsel for the applicant further argued that on 05.03.2022, charge-sheet has been filed against the applicant for the offence punishable under Section 505 (2) I.P.C. only and the Court concerned has taken cognizance on it. His submission is that even assuming that the applicant is being convicted for

the offence punishable under Section 505 (2) I.P.C., then, the maximum sentence is to be awarded to him by the Court as per the statute is three years or with fine or with both.

(7) Learned Counsel for the applicant has next argued that the FIR of the instant case has been registered on account of political vendetta. He argued that 87 criminal cases have been registered against the applicant on false, concocted and vexatious allegations. However, out of 87 criminal cases, the applicant has been enlarged on bail in 84 cases. He further argued that applicant is incarcerated in jail since 26.02.2020 i.e. more than 2 years in one or the other false criminal cases. He further argued there there is no material in the F.I.R. to show or even any apprehension that the applicant would either try to abscond/ evade during trial or influence the witnesses in any manner. Hence the applicant is liable to be enlarged on bail.

(8) Per contra, learned Additional Advocate General appearing on behalf of the State has vehemently opposed the prayer of the learned Counsel for the applicant to enlarge the applicant on bail and has argued that serious allegations have been levelled against the applicant in the F.I.R., hence applicant is not liable to be enlarged on bail. He, however, admitted the fact that charge sheet against the applicant has been filed under Section 505 (2) I.P.C. on 05.03.2022 and the trial Court has taken cognizance on it.

- (9) Without expressing any opinion on the merits of the case and taking into account the facts that applicant has been incarcerated in jail in the instant case since 26.02.2020 i.e. more than 2 years; charge-sheet has been submitted against the applicant; and the trial Court has taken cognizance on it, this Court is of the view that the continued custody of the applicant, *prima facie*, may not be necessary for the purpose of further investigation and trial in the instant case.
- (10) Accordingly, the instant application for bail is **allowed**.
- (11) Let the applicant, **Mohammad Azam Khan**, involved in Case Crime No. 79 of 2019, under Sections 500, 505 I.P.C., Police Station Hazratganj, District Lucknow be released on bail on his furnishing a personal bond with two sureties 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 by intimidating/pressurizing the witnesses, during the investigation or trial;
 - (ii) The applicant shall co-operate in the trial. 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.

- (ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.
- (iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.
- (iv) 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 Cr.P.C. 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.

(**Ramesh Sinha, J.**)

Order Date :- 8.3.2022

Ajit/-