

Court No. - 1

Case :- CRIMINAL MISC. IInd BAIL APPLICATION No. - 2205 of 2020

Applicant :- Atul Kumar Singh Alias Atul Kumar Rai

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajrshi Gupta, Ajay Srivastava, Dileep Kumar (Senior Adv.)

Counsel for Opposite Party :- G.A., Sudist Kumar

Hon'ble Ramesh Sinha, J.

Order on Crl. Misc. Parole Application.

Short counter affidavit filed today by learned counsel for the complainant is taken on record.

Heard Sri Dilip Kumar, learned Senior Advocate assisted by Sri Ajay Srivastava, learned counsel for the applicant, Sri Krishna Pahal, learned Additional Advocate General assisted by Sri A.R. Chaurasia, learned A.G.A. for the State, Sri Sudist Kumar, learned Special Counsel for the State and Sri Yogesh Agarwal, learned counsel for the complainant.

The first bail application of the applicant was rejected by this Court on 15.11.2019.

Learned counsel for the applicant submits that the present parole application has been moved on behalf of the applicant in the aforesaid second bail application which is stated to be pending before this court on the ground that he was elected as a Member of Parliament from Ghosi Parliamentary Constituency of district Mau in the year 2019 but he has not been administered oath till date nor he attended a single day in the Lok Sabha and in view of Article 101 (4) of the Constitution of India, "..... if for a period of sixty days a member of either House of the Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant". Therefore, there would be infringement in the Constitutional right of the applicant and his seat would be declared vacant. He submits that in view of the same, the applicant may be allowed to take oath as Member of Parliament in Lok Sabha on 31st January, 2020. He urged that for the said purpose the applicant may be taken in police custody. The applicant undertakes to abide by any condition which this Court may impose.

Sri Sudist Kumar, learned counsel appearing on behalf of the complainant though opposed the prayer made by learned counsel for the applicant but could not dispute the fact that the applicant after being elected as Member of Parliament has not taken the oath till date. He also could not dispute the provisions of law under Article 101 (4) of the Constitution of India about the Constitutional right of the applicant.

Learned Additional Advocate General Sri Krishna Pahal though also opposed the parole of the applicant but could not dispute the proposition of law as has been argued by learned counsel for the applicant.

Considering the submission made by learned counsel for the applicant, I

am of the opinion that in view of the provision contained under Article 101 (4) of the Constitution of India, the applicant shall be permitted to take oath as Member of Parliament in Lok Sabha on 31st January, 2020, by the trial court concerned, thereafter he shall be produced before it by the police on 1st February, 2020. For the said purpose the applicant shall be taken in **police custody**.

Let the applicant-Atul Kumar Singh @ Atul Kumar Rai involved in S.T. No. 407 of 2019 arising out of case crime 548 of 2019 under sections 420, 376, 504, 506 I.P.C., police station Lanka, District Varanasi be permitted to take oath as Member of Parliament in Lok Sabha on 31.1.2020. For the said purpose he would be taken in **police custody** from the evening of 30.01.2020 till 01.02.2020 in police custody by trial court concerned on his furnishing a personal bond of Rs. ten lacs and two sureties (out of which one should be of his family member) each in the like amount to the satisfaction of trial court concerned on the condition/undertaking that he shall be produced before it on 01.02.2020 during the working hours by the police, thereafter he shall be sent to judicial custody.

The applicant is directed to deposit the expenses incurred for the said purpose before the court concerned or the appropriate authority, as the case may be and the trial Court concerned shall also ensure that the said expenses are deposited by the applicant before he is allowed to go in **police custody** for the said purpose.

It is made clear that during the period of short term parole, i.e., from the evening of 30.01.2020 till he return back to jail, the applicant shall not use any mobile phone etc. and not indulge in tempering of evidence nor in any other anti social activities. He shall be taken from jail to Parliament in Lok Sabha at New Delhi under adequate security headed by an Officer not below the rank of Deputy Superintendent of Police/Circle Officer.

The police personnel, who shall take the applicant for the aforesaid purpose on the particular date as ordered above, shall report with him to the Competent Authority in the office of the Speaker of Lok Sabha/Parliament, who shall then take the applicant under his custody and ensure that he take oath as Member of Parliament in Lok Sabha on 31st January, 2020 and also ensure that he will not move out on his own from the premisses where the Session of the Lok Sabha/Parliament is to be held. After completion of the oath on the said date itself, the custody of the applicant shall immediately be handed over by the said Competent Authority in the office of the Speaker of Parliament/Lok Sabha to the police officials, who had handed him over to him. The said process shall also recorded in the appropriate place/register/notebook present in the office of the Speaker of Parliament for the said purpose, if so required.

It is further made clear that the applicant shall not be permitted to roam here and there except going to Lok Sabha/Parliament at New Delhi.

The A.D.G. (Zone) Allahabad is directed to strictly monitor the activities of the applicant during the aforesaid period, failing which action shall be taken against the erring officials.

If the applicant breaches any of the conditions as directed above, the S.S.P., Allahabad shall report the same to the trial Court concerned immediately, which shall at once send back the applicant to jail without

waiting any order from this Court before 01.02.2020.

The District and Sessions Judge, Allahabad shall send a compliance report regarding the fact that the applicant has been produced before the trial Court on 01.02.2020 during working hours by the police and has been sent to judicial custody, to the Registrar General of this Court forthwith to be kept on record.

It is also made clear that as it has been informed to the Court that the cross examination of the victim is being recorded and the next date fixed is 27.01.2020, this order shall not come in the way of recording of cross examination of the victim and the same shall continue to be recorded by the trial court and the applicant shall not cause any hurdle and co-operate in the same.

With the aforesaid observations, the present application stands disposed of.

Order Date :- 23.1.2020

Shiraz