

Reserved On:- 24.09.2020

Delivered On:- 13.10.2020

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19048 of 2020

Applicant :- Mohd. Abdullah Azam Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Syed Safdar Ali Kazmi

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

1. Heard Sri Gopal Swaroop Chaturvedi, learned Senior Counsel assisted by Sri Syed Safdar Ali Kazmi, learned counsels for the applicant, Sri Vinod Diwakar, learned Additional Advocate General assisted by Sri Jai Narayan, learned A.G.A. and Sri Abhijeet Mukherjee, learned brief holder for the State and perused the record.

2. The instant bail application has been filed on behalf of the applicant, **Mohd. Abdullah Azam Khan**, with a prayer to release him on bail in **Case Crime No. 943 of 2019, under Sections 420, 467, 468 & 471 I.P.C., Police Station- Civil Lines, District- Rampur**, during pendency of trial.

3. The allegations against the applicant in the F.I.R. lodged against him and two other accused persons on 21.11.2019 at 22 hrs are with reference to commission of an offence allegedly committed in the year 2014. It is alleged in the F.I.R. that on 13.03.2014, a portion of Gata No. 55 measuring about 168.82 sq. yards, which was recorded as a hotel, Quality Bar, as per Fasli Year 1461 in the Revenue Record, was let out on rent to Smt. Tanzeen Fatima (mother of applicant/co-accused) on 13.03.2014 in a meeting of Zila Sahkari Vikas Sangh, Rampur presided over by co-accused, Sri Syed Jafar Ali Jafri (the then Chairman of Zila Sahkari Vikas Sangh, Rampur). On 22.07.2014 again another meeting was convened wherein the name of the applicant, Abdullah Azam Khan, was included along with the name of mother of applicant/co-accused, as co-tenant. It was further alleged in the above mentioned F.I.R. that on 24.09.2019, a letter was submitted by Assistant Commissioner and Assistant

Director Sahkarita Rampur along with a report in which a mention was made of a letter dated 21.10.2011 of Secretary District Sahkari Vikas Sangh Ltd., Rampur stating therein that there was no record available regarding the building situated at Gata No. 55 in village- Saeed Nagar, Hardopatti Tehsil- Sadar, with Sahkari Sangh, Rampur. The above mentioned property was under the administration of District Magistrate and was let on rent to the applicant and co-accused on account of alleged conspiracy of the then Chairman, Sri Syed Jafar Ali Jafri.

4. Learned Senior Counsel for the applicant has submitted that the applicant has been implicated in this case on account of political reasons. The Investigating Officer has failed to bring on record any evidence to prove the involvement of the applicant in the alleged offence. Zila Sahkari Vikas Sangh Ltd., Rampur was established in the year 1947. Quality Bar mentioned in the F.I.R. was situated in the building belonging to Zila Sahkari Vikas Sangh, Rampur since 1964 and was being run by one Gagan Lal. He was in illegal occupation of the same and Zila Sahkari Vikas Sangh Ltd. evicted him after lodging F.I.R. on 19.02.2013 with the help of local administration. The aforesaid Gagan Lal approached this Court against his removal from the shop, known as Quality Bar by filing a writ petition but the same was dismissed on 26.02.2013. Zila Sahkari Vikas Sangh, Rampur, thereafter, called for bid for the purpose of letting out the property of Quality Bar on rent and the mother of the applicant participated therein and emerged as highest bidder. The offer of payment of rent @ Rs. 1200/- per month was the highest and therefore, the property was allotted to her by Zila Sahkari Vikas Sangh, Rampur in March 2014. Thereafter, she had been paying the rent of the property regularly till November, 2019. For the first time, it was alleged in the F.I.R. that the property let out to the applicant does not belong to Zila Sahkari Vikas Sangh, Rampur. The mother of the applicant took the property on rent in the bonafide belief that property belonged to Zila Sahkari Vikas Sangh, Rampur since earlier Gagan Lal was tenant in the same property. The applicant has been falsely implicated in this case. Even if it is accepted that the property belonging to the State has been let out by Zila Sahkari Vikas Sangh, Rampur to the applicant illegally, then the termination of tenancy was the only remedy and the criminal

prosecution of the applicant cannot be justified. Charge-sheet has already been submitted in this case on 16.05.2020 by the Investigating Officer. The applicant is son of Mohammad Azam Khan, who is the Member of Parliament and he has been implicated only on account of political rivalry of his father with the ruling party. All the alleged offences are triable by Magistrate. There is no chance of his absconding or tampering with the prosecution witnesses if he is enlarged on bail and he undertakes to present himself before the trial court on each and every date. He is languishing in jail since 26.02.2020. On account of spreading of corona virus in jails, there is threat to his life and there is no possibility of early conclusion of trial.

5. Learned Additional Advocate General appearing on behalf of the informant has submitted that the land of Gata No. 55 situated in village- Saeed Nagar Hardopatti, Tehsil- Sadar is a non-zamindari abolition land. As per *Khewat No. 1*, land is recorded in the name of State Government under the control of District Magistrate- Rampur as *Arazi Sadak* in the category of mall/hotel. As per revenue record, the land is measuring 168.02 sq. metres. The controversy began when report of Zila Sahayak Nibhandak Sahakari Samitiya Uttar Pradesh, Rampur dated 21.10.2011 surfaced which stated that Zila Sahkari Vikas Sangh, Rampur does not have any record regarding Gata No. 55, when Zila Sahkari Vikas Sangh, Rampur is regularly letting out the land to different tenants. One such tenant, Gagan Lal, was evicted and he also approached this Court by filing a writ petition which was dismissed in the year 2013. However, the then Cabinet Minister of Department of Urban Development, Sri Mohammad Azam Khan, in a meeting dated 25.07.2013 with Apar Ayukta and Apar Nibhandak, Kraya-Vikraya, Sahkarita, Lucknow, U.P. issued a letter dated 01.08.2013 for the purpose of calling a meeting for allotment of the aforesaid land before it is again occupied by some unauthorized person. Thereafter, the property was put up for auction at the behest of Sri Mohammad Azam Khan by the authorities of the State and the District Vikas Sahkari Sangh, Rampur and wife of Sri Mohammad Azam Khan and mother of applicant, Smt. Tazeen Fatima was allotted this land on a rent of Rs. 1200/- per month and later name of applicant was also included as allottee. The entire exercise was collusive and at the behest of Sri Mohammad Azam Khan.

Therefore, it is crystal clear that the alleged offences were committed by the accused persons in getting the allotment of the land made in their favour. The applicant has criminal history of 44 cases and the offences alleged are fully made out against him.

6. It has further been submitted by the learned Additional Advocate General that in the cases of *Prahlad Singh Bhati Vs. NCT, Delhi (2001) 4 SCC 280*; *Gurcharan Singh Vs. State (Delhi Administration) AIR 1978 SC 179*; *Chaman Lal Vs. State of U.P. & Ors. (2004) 7 SCC 525*; *Anwari Begum Vs. Sher Mohammad and Another (2005) 7 SCC 326*; *Dhuk Singh Versus State of Rajasthan & Another (2009) 11 SCC 369* and *Kalyan Chandra Sarkar Versus Rajesh Ranjan Alias Pappu Yadav and Another (2004) 7 SCC 528*, the Apex Court has held that while granting bail to an accused, Court should consider the following parameters :-

- (i) gravity of offence and severity of punishment in the event of conviction;
- (ii) character, behaviour, means, position and standing of the accused;
- (iii) danger of accused absconding or fleeing if released on bail;
- (iv) danger, of course, of justice being thwarted by grant of bail; and
- (v) reasonable apprehension of the witnesses being tampered with.

7. Learned Additional Advocate General has submitted that in the instant case, the applicant has also been implicated for the offence u/s 467 I.P.C. which provides for punishment upto imprisonment for life. Therefore, the offences alleged against the applicant are grave. There is also implication of the applicant u/s 468, 471 I.P.C., and a minister of the State Government used the government machinery to create forged documents for extending undue gains to his wife and son who colluded with him. He has further submitted that there is danger of the accused absconding and fleeing from justice, being resourceful person and may also tamper with the evidence. Mohammad Azam Khan has been declared land mafia by the Sub-Divisional Magistrate, Rampur on

12.07.2019. The applicant is involved in number of cases of extortion, cheating, forgery, creation of forged government records and other offences.

8. After considering the rival submissions, this Court finds that the applicant was although beneficiary of the allotment made in his favour and co-accused Smt. Tazeen Fatima, his mother, but the main allegation is against his father, who was Cabinet Minister in the State Government at the relevant time and who got the land in dispute allotted in favour of his wife and son by misusing his official position. There is no allegation against applicant that he indulged in any manipulation for getting the land allotted in favour of his mother and later for himself. Before the land in dispute was allotted to the applicant and his mother, it was admittedly letted out to one Gagan Lal since the year 1964 by the Zila Sahkari Vikas Sangh, Rampur. It cannot be said that for the first time the land in dispute was allotted to the applicant and his mother by commission of alleged offences by the Zila Sahkari Vikas Sangh, Rampur. The State had not been vigilant in protecting the properties vested in it since the year 1947 and the Zila Sahkari Vikas Sangh, Rampur was treating the property as its own, whether malafidely or under some bonafide mistake is yet to be decided. The applicant may be having criminal history of 44 cases but there is no material on record proving his conviction in any case. Accused is permanent resident of Rampur and has assets. Therefore, there is no chance of his fleeing away from court proceedings. There is nothing on record to indicate that he ever threatened any witness in any case. The offences alleged are not such which will lead award of maximum punishment u/s 467 I.P.C. which is triable by magistrate, like other offences alleged against the applicant.

9. Having considered the material on record, larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of *Dataram Singh Vs. State of U.P. and another, reported in (2018) 3 SCC 22*, spreading of novel corona virus in jails and uncertainty about commencement and conclusion of trial and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

- (i) The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
- (ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.
- (iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
- (iv) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.
- (v) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

10. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

11. However, the trial court is expected to conclude the trial against the applicant within a period of one year from the date the normal functioning of the Court is resumed, keeping in view the disturbances caused in the functioning of the Courts on account of spread of novel coronavirus.

Order date : 13.10.2020

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