

**Reserved on 01.09.2020**

**Delivered on 13.10.2020**

**1. Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 15385 of 2020

**Applicant :-** Dr. Tazeen Fatima

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Syed Safdar Ali Kazmi, Sr. Advocate  
Shri G.S. Chaturvedi

**Counsel for Opposite Party :-** G.A.

**2. Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 19036 of 2020

**Applicant :-** Mohd. Azam Khan

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Syed Safdar Ali Kazmi, Gopal Swarup  
Chaturvedi (Senior Adv.)

**Counsel for Opposite Party :-** G.A.

**3. Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 19260 of 2020

**Applicant :-** Mohd. Abdullah Azam Khan

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Syed Safdar Ali Kazmi, Gopal Swarup  
Chaturvedi (Senior Adv.)

**Counsel for Opposite Party :-** G.A.

**Hon'ble Siddharth, J.**

Heard Sri G.S. Chaturvedi, learned Senior Counsel assisted by Sri Syed Safdar Ali Kazmi and Sri Mohd. Khalid-I, learned counsels for the applicants and Sri Vinod Diwakar, learned Additional Advocate General assisted by Sri Jai Narain, learned counsels for the State.

The three bail applications noted above have been filed on behalf of the applicants, **Dr. Tazeen Fatima, Mohd. Azam Khan and Mohd. Abdullah Azam Khan** respectively with a prayer to release them on bail in **Case Crime No. 04 of 2019, under Sections 420, 467, 468, 471 IPC, Police Station Ganj, District-Rampur**, during pendency of trial.

The facts of all the three bail applications of the applicants

are common and applicants are the members of the same family. The first Bail Application No.15385 of 2020 has been filed by Dr. Tazeen Fatima, (hereinafter referred to as first applicant), who is wife of co-accused, Mohd. Azam Khan and mother of co-accused, Mohd. Abdullah Azam Khan. The second Bail Application No.19036 of 2020 has been filed by Mohd. Azam Khan, (hereinafter referred to as second applicant), who is husband of co-accused, Dr.Tazeen Fatima and father of co-accused, Mohd. Abdullah Azam Khan. The third and last Bail Application No.19260 of 2020 is of Mohd. Abdullah Azam Khan, (hereinafter referred to as third applicant), who is son of co-accused, Dr. Tazeen Fatima and Mohd. Azam Khan.

An FIR was lodged by one, Akash Saxena, a member of Bhartiya Janta Party, alleging that Mohd. Azam Khan and Dr. Tazeen Fatima have got two birth certificates issued from two places, one dated 28.01.2012, from Nagar Palika Parishad, Rampur and second dated 21.04.2015, from Nagar Nigam, Lucknow, regarding birth of their son, Mohd. Abdullah Azam Khan. First birth certificate, recording his date of birth as 01.01.1993, was used for making passport, etc., and it was misused in foreign travel. Second birth certificate, recording his date of birth as 30.09.1990, was misused in government documents, contesting election to Legislative Assembly of State and in different recognitions given to Jauhar University. Both birth certificates were fabricated and were used for personal gains by accused persons by way of an organized fraud. Hence the FIR was lodged.

Applicants approached this Court by way of Application U/S 482 No.39535 of 2019 challenging the charge-sheet and the summoning order passed by Additional Chief Judicial Magistrate, Court No.3, Rampur, which was dismissed by this Court on 07.02.2020 holding that the perusal of FIR and material collected

by the Investigating Officer, on the basis of which charge-sheet has been submitted, make out *prima facie* case against the accused-applicants and refused to quash the charge-sheet submitted against the applicants.

Third applicant, Mohd. Abdullah Azam Khan, contested election for being elected as member of Legislative Assembly of U.P. on the basis of the birth certificate dated 21.4.2015 issued by Nagar Nigam, Lucknow and his date of birth was shown therein as 30.9.1990. The aforesaid election was challenged before this Court in Election Petition No.8 of 2017 on the ground that in the birth certificate dated 28.01.2012 issued by Nagar Palika Parishad, Rampur, his date of birth is mentioned as 01.01.1993. Therefore, the election of the third applicant was challenged on the ground that from the date of birth mentioned in the certificate issued by Nagar Palika Parishad, Rampur, applicant was minor at the time of his election, as member of Legislative Assembly of the State, wherein he had filed nomination papers. The above Election Petition was allowed by this Court and the election of the third applicant, as member of Legislative Assembly of the State, was declared void and set aside holding that the applicant was not competent to contest the election as per his birth certificate.

It was held by this Court in Election Petition aforesaid that the birth certificate issued by Nagar Nigam, Lucknow, was not found to have been issued in accordance with the procedure provided for the same.

Learned Senior Counsel for the applicants in all the three cases, Sri G.S. Chaturvedi, has submitted that the offences alleged will not travel beyond the purview of Section 23 of the Registration of Births and Deaths Act, 1969, which provides that any information given for the purpose of being inserted in any register of births and deaths, which is known or believed by

person giving information to be false, shall be punished with fine, which may extend to Rs.50/-. Further reliance has been placed on Section 25 of the aforesaid Act, which provides that no prosecution for an offence punishable under the Act shall be instituted except by an officer authorized by the Chief Registrar by general or special order. He has also referred Sections 12 and 15 of the Passport Act, 1967, which provides for penalties and previous sanction of central government respectively for prosecution regarding offence of obtaining passport on the basis of any false information.

Learned Senior Counsel for the applicants has further submitted that the judgments passed by this Court in Application U/S 482 No. 39535 of 2019 and the Election Petition No.8 of 2017 are not relevant in these proceedings in view of Sections 41, 42 and 43 of the Evidence Act. Under Section 40 of the Evidence Act, the existence of a judgment is a relevant fact, if by law it has the effect of preventing any court of taking cognizance of suit and holding a trial. It is intended to include cases, where the principle of *res-judicata* inter parties applies. The second trial of a person already tried is barred and the judgment of trial resulting in acquittal or conviction will be relevant. Under Section 41 of Evidence Act, judgments *in-rem* regarding status of a person are effective against everybody while judgment *in-personem* binds only parties and not relevant in any case of subsequent proceedings. Under Section 42 of Evidence Act, judgments and orders mentioned in Section 41 are relevant, if they relate to matters of a public nature but such judgments and orders are not conclusive proof of that which they state. Judgments of such cases are relevant to every case of proceedings in which the matter is again in question, but shall not be conclusive proof of the matter. He has finally submitted that under Section 43 of Evidence Act, judgments and orders

other than those mentioned in sections 40, 41 and 42 are irrelevant, unless the existence of such judgment or order, is a fact in issue, or is relevant under some other provisions of the Act. Thus, general principles of Law is that the judgments, previous or subsequent, are not relevant. Act recognizes few exceptions given under Section 40 and 43 of the Evidence Act. The present case does not falls under exceptions aforesaid. Therefore, the judgments passed by this Court in Application U/S 482 and in Election Petition are not relevant for the purposes of consideration of the bail application of the applicants.

Last submission of learned Senior Counsel for the applicants is that all the offences alleged against the applicants are triable by Magistrate. The applicants are yet to be tried for the alleged offences and are in jail since 26.02.2020. They have been implicated for political reasons. Charge-sheet has already been submitted and the applicants undertake to co-operate with the trial. They have substantial properties in their name and they cannot abscond from the proceedings. Hence they may be enlarged on bail.

Sri Vinod Diwakar, learned Additional Advocate General, has vehemently opposed the bail applications of the applicants. He has submitted that the allegations against the applicants are quite serious in nature. The third applicant, Mohd. Abdullah Azam Khan, contested the election for membership of State Legislative Assembly, on the basis of fraudulently obtained documents and this Court has already found the allegations against all the applicants to be correct in Election Petition No. 8 of 2017. The birth certificate dated 21.4.2015 issued by Nagar Nigam, Lucknow, was issued on the basis of the affidavits filed before the Nagar Nigam by the first and second applicants and therefore, they were instrumental in getting applicant No.3 elected. The first and second applicants are supposed to be

responsible persons since first applicant is a lecturer and the second applicant is former Cabinet Minister of the State Government. He has submitted that for the offence under Section 467 IPC, the punishment is of life imprisonment.

He has further submitted that election to Legislative Assembly is a matter of public nature. Hence as per Section 42 of the Evidence Act, the order passed in Election Petition No. 8 of 2017 is relevant for the purpose of present case. Applicants are influential persons and there is every chance of their tampering with the prosecution witnesses. Even the statement of the informant has not been recorded as yet and the applicants should be confined in jail till the same is recorded by the trial court. All the applicants have criminal history and the record reveals that they have misused their official positions for the personal gains. They have behaved most irresponsibly in public life. He has pointed out to the written objection filed before this Court, wherein it is stated that the trial court issued summons to the accused persons on 19.8.2019 and fixed 03.10.2019, but no one appeared before the court. On 03.10.2019 and 29.10.2019 bailable warrants were issued against all the accused persons. On 20.11.2019, 02.12.2019, 18.12.2019, non-bailable warrants were issued, but no one appeared before the court. Thereafter, proceedings under Section 82 Cr.P.C. was initiated on 24.01.2020 and 25.02.2020. Proclamation under Section 82 Cr.P.C. was issued. Thereafter on 26.02.2020, accuseds-applicants surrendered before the trial court. Hence it is clear that applicants have left no stone unturned, to evade the process of law and they have scant respect for law of the land.

After hearing the rival contentions and going through the material on record, this Court finds that the judgments passed by this Court in Criminal Misc. Application (U/S 482) No. 39535 of 2019 and Election Petition No.08 of 2017 are relevant in this

case, but not conclusive for the purpose of consideration of bail applications of the applicants regarding the alleged offences in view of Section 42 of the Evidence Act. The conduct of the first and second applicants is definitely wanting in rectitude keeping in view positions held by them. The third applicant has although contested and won election of the State Legislative Assembly on the basis of fabricated document, yet he was not instrumental in getting it issued by giving any affidavit before the Nagar Nigam, Lucknow. He was only beneficiary of the act done by other two applicants. The Additional Advocate General has apprehension regarding tampering of witnesses, which cannot be lost sight of keeping in view the criminal antecedents of the applicant No.2. There is no reply given to the arguments raised on behalf of applicants regarding remedy under Registration of Births and Deaths Act, 1967.

The argument on behalf of learned counsel for the opposite party that judgment passed by this Court in Election Petition No.08 of 2017 is a judgment of public nature deserves consideration. A judgment of public nature should be such which declares, defines or otherwise determines the status of a person, or a jural relation of that person to the world generally. In the Election Petition merely a statutory challenge was made to the election of a third applicant to the Legislative Assembly on the grounds available under Section 100 of the Representation of the People Act, 1951. It was not an action for establishing the status of third applicant. It was also not an action initiated by the State to have the status of the third applicant established or his jural relation to the world generally established. The Election Petition is not a suit of general nature or representative action for adjudication of the status of a person. Hence it cannot be considered to be a judgment of public nature as per Section 42 of Evidence Act.



Hence, this Court is of the view that since 3<sup>rd</sup> applicant has not given any affidavit for changing his date of birth before Nagar Nigarm, Lucknow, but it has been done by the 1<sup>st</sup> and 2<sup>nd</sup> applicants, namely, Tazeen Fatima and Mohd. Azam Khan, hence he is entitled to be released on bail forthwith. 1<sup>st</sup> applicant deserves to be given benefit of Section 437 (1) Cr.P.C. being woman and shall be enlarged on bail. 2<sup>nd</sup> applicant shall be released on bail only on the date the statement of the informant gets recorded. All the applicants have criminal histories to their credit, but in none of the cases they have been convicted by the court as clear from the material on record.

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* and without expressing any opinion on the merits of the case, **let the first and third applicants involved in the aforesaid crime be released on bail forthwith and the second applicant shall also be released on bail after statement of the informant is recorded by the trial court**, on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

1. The applicants shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicants shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicants shall not indulge in any criminal activity or commission of any crime after being released on bail.
4. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.



5. 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.

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

The trial court is expected to record the statement of the informant within a period of three months from the date of normal functioning of the trial court is restored, keeping in the disturbance created by spread of Novel Corona Virus in the functioning of courts.

**Order Date :- 13.10.2020**

Ruchi Agrahari