

Reserved on :- 05.11.2020

Delivered on :- 18.11.2020

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34674 of 2020

Applicant :- Aley Hasan Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Zaheer Asghar, Syed Ahmed Faizan, Syed Farman Ahmad Naqvi (Senior Adv.)

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

1. Heard Sri Syed Farman Ahmad Naqvi, learned Senior Counsel assisted by Sri Syed Ahmed Faizan and Sri Zaheer Asghar, learned counsels for the applicant, Sri Vinod Diwakar, learned Additional Advocate General, Sri S.K. Pal, learned Government Advocate, Sri Jai Narayan, learned A.G.A.-I and Sri Abhijit Mukherji, learned brief holder appearing on behalf of the State.

2. The instant bail application has been filed on behalf of the applicant, **Aley Hasan Khan** with a prayer to release him on bail in **Case Crime No. 239 of 2020 under Sections 419, 420, 467, 468, 471, 170 I.P.C., Police Station- Civil Lines, District- Rampur**, during pendency of trial.

3. The allegation in the F.I.R. is that on the information of the informer, the applicant was arrested. He was wearing a mask and hiding himself from police since the first information report as Case Crime No. 856 of 2019 u/s 447, 389 I.P.C. was registered against him. On being caught by the police, he produced a copy of stay order of the Hon'ble High Court dated 04.08.2020. The informant found that there was no stamp or signature on the order of the High Court. On the order of the High Court, Court No. 55, Criminal Misc. Writ Petition No. 1751 of 2019 (Aley Hasan and Another Versus State of U.P. and Others) was mentioned. The informant verified the aforesaid order from the official website of the High Court and found that there was no such order dated 04.08.2020 and the aforesaid writ petition was pending. On search of the applicant, forged Aadhar card and identity card was recovered from him. On being questioned, the applicant is alleged to have replied that several criminal cases are registered

against him and he has to visit his advocates at Rampur and he used the Aadhar card and identity card while coming from Delhi to Rampur.

4. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in this case. He is a retired Deputy Superintendent of Police, U.P. and recipient of Presidential Gallantry Award. He has performed outstanding service in police. He has further submitted that number of cases have been registered against the applicant at the behest of the State machinery. The applicant is in jail since 11.08.2020 and has criminal history of 57 cases. All the cases have been registered after the government has changed and there were only 3 cases registered against him prior to the year 2019 wherein final reports have already been submitted. In most of the cases, anticipatory bail has been granted to the applicant and in most of the other cases, he is on bail. Learned counsel for the applicant has further submitted that the recital in the F.I.R. is absolutely false since Criminal Misc. Writ Petition No. 1751 of 2019 was decided by this Court on 22.01.2019 and in the F.I.R., there is allegation that when the informant verified the status of this writ petition on 10.08.2020, he found it to be pending. Learned Senior Counsel for the applicant has submitted that the informant has implicated the applicant on the basis of incorrect facts and on the basis of false allegation that the applicant was found in possession of an order dated 04.08.2020 regarding Criminal Misc. Writ Petition No. 1751 of 2019 and the informant found the aforesaid writ petition to be pending from the official website of the High Court. He has submitted that the conduct of the informant shows that he has falsely implicated the applicant.

5. Sri Vinod Diwakar, learned Additional Advocate General has vehemently opposed the bail application and has submitted that while checking the official website, the Investigating Officer saw another order of different case crime number, therefore, the allegation in the F.I.R. is correct. He has further submitted that the applicant has criminal history of 57 cases. The applicant has tried to flee from the law. He has relied upon the judgement in the case of ***Kalyan Chandra Sarkar Versus Rajesh Ranjan and Ors., (2004) 7 SCC 528***, wherein the Apex Court has held that bail should not be granted or refused as a matter of course and reason should be given for the same and has prayed that the bail application of the applicant may be rejected.

6. After hearing the learned counsel for the parties, this Court finds that the allegations against the applicant in the F.I.R. are not fully correct. The allegation that the Criminal Misc. Writ Petition No. 1751 of 2019 was found pending by the Investigating Officer on 10.08.2020 is belied from the order dated 22.01.2019 passed by this Court disposing of the aforesaid writ petition. Further allegation of recovery of forged Aadhar card and I.D. proof are only allegations at this stage and the applicant has not admitted that he was having any such documents in his possession. All the offences alleged are triable by Magistrate. The criminal history of the applicant starts from the year 2019 only. The 54 cases lodged against the applicant are after the change in the government of the State. Earlier, he had 3 cases against him wherein final report has been submitted. Those cases are regarding minor offences.

7. Keeping in view the nature of the offence, argument advanced on behalf of the parties, spreading of novel corona virus in jails, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India 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) In case the applicant has been enlarged on short term bail as per the order of committee constituted under the orders of Hon'ble Supreme Court his bail shall be effective after the period of short term bail comes to an end.
- (v) The applicant shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored. In case the court below is

functioning normally, this condition will not apply and the applicant shall be enlarged on bail on execution of personal bond and two sureties to the satisfaction of the court below.

(vi) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(vii) 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.

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

9. However, the trial court is expected to conclude the trial against the applicant within a period of one year.

Order Date :- 18.11.2020

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