

Reserved on 19.11.2020
Delivered on 26.11.2020

1. Case :- CRIMINAL MISC. BAIL APPLICATION No. - 27852 of 2020

Applicant :- Mohammad Azam Khan
Opposite Party :- State of U.P.
Counsel for Applicant :- Syed Safdar Ali Kazmi
Counsel for Opposite Party :- G.A., Sharad Sharma, Vinod Diwakar
Connected with

2. Case :- CRIMINAL MISC. BAIL APPLICATION No. - 27990 of 2020

Applicant :- Mohammad Abdullah Azam Khan
Opposite Party :- State of U.P.
Counsel for Applicant :- Mohammad Khalid, Gopal Swarup Chaturvedi (Senior Adv.)
Counsel for Opposite Party :- G.A., Vinod Diwakar
Connected with

3. Case :- CRIMINAL MISC. BAIL APPLICATION No. - 27931 of 2020

Applicant :- Mohammad 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., Sharad Sharma, Vinod Diwakar

Hon'ble Suneet Kumar, J.

Heard Shri Gopal Swaroop Chaturvedi, learned Senior Counsel, appearing for the applicant assisted by Sri Syed Safdar Ali Kazmi and Mohd. Khalid-I, learned counsels for the applicant and Shri Vinod Diwakar, learned Addl. Advocate General assisted by Shri Jai Narain and Shri Abhijeet Mukherjee, learned counsels for the State.

The three bail applications have been filed on behalf of Mohammad Azam Khan and his son Mohammad Abdullah Azam Khan, respectively, with a prayer to release them on bail during pendency of trial. The aforesaid bail applications at Serial Nos. 1 & 2 arise from Case Crime No. 980 of 2019, under Sections 420, 467, 468, 471, 120B IPC Police Station, Civil Lines, District Rampur; and bail application at Serial No. 3 arises from Case Crime No. 0594 of 2019, under Sections 420, 467, 468, 471 IPC and Section

12(1A) Passport Act, 1967, Police Station Civil Lines, District Rampur.

The bail applications are being heard together and is being decided by a common order on the consent of the learned counsel for the parties. The facts of all the three bail applications are common. The allegations are against the father and son of forging and fraudulently obtaining Permanent Account Number (for short-'PAN') and Passport.

The bail application at Serial No. 1 has been filed on behalf of Mohammad Azam Khan (hereinafter referred to as, the 'first applicant') and bail applications at Serial No. 2 & 3 have been filed on behalf of Mohammad Abdullah Azam Khan, son of the first applicant (herein after referred to as the 'second applicant').

It is alleged in the F.I.R. (Case Crime No. 980 of 2019) that PAN card bearing No. DFOPK6164K was issued in the name of second applicant, wherein, his date of birth is recorded as 01.01.1993, which is as per Highschool certificate. It is alleged that PAN is linked with the bank account of the second applicant. It is further alleged that the second applicant on 24.01.2017 filed nomination application for contesting 34 Swar Assembly Constituency, Rampur, in which passbook of the bank account was deposited, wherein, he mentioned another PAN bearing No. DWAPK7513R recording another date of birth, though, it is alleged that at the time of filing of nomination paper, the subsequent PAN was not linked with the bank account.

It is alleged that the second applicant conspired with his father (first applicant), a former Cabinet Minister, in filing nomination papers by mentioning the wrong PAN wherein the date of birth was mentioned as 30.09.1990, whereas, in the earlier PAN, the date of birth was mentioned 01.01.1993. It is alleged that the

purpose of cheating and forgery of documents recording date of birth was to gain undue benefit to contest the Assembly election, whereas, on the earlier recorded date of birth (01.01.1993) second applicant was ineligible.

The allegation in the F.I.R. (Case Crime No. 0594 of 2019) pertains to obtaining Passport based on similar allegations.

It is urged by learned counsel for the applicant that ingredients of the offence (forgery) is not made out taking the allegations and evidence on face value. Apart from the instant cases, the first informant had lodged another F.I.R. bearing Case Crime no. 04 of 2019, under Sections 193, 420, 467, 468, 471 IPC, in which applicants were made accused. Allegation is that the first applicant in criminal conspiracy with the second applicant in a pre-planned manner for personal benefit obtained forged birth certificate from two different places. It is alleged that on 28.6.2012, birth certificate was obtained from Nagar Palika Parishad, Rampur, wherein date of birth is mentioned 01.01.1993 and the place of birth of the second applicant is shown at Rampur. Thereafter, on 21.04.2015 a forged birth certificate was obtained from Nagar Mahapalika, Lucknow, and the place of birth has been shown at Lucknow. It is alleged that on the strength of the forged birth certificate, second applicant has used it illegally for perpetuating fraud, misrepresentation and cheating in various offices including Passport Office and for obtaining PAN. It is further urged that after investigation, charge-sheet in the said case came to be submitted on 01.04.2019 against the applicants and his wife/mother i.e. Dr. Tazeen Fatima. It is submitted that second applicant and his mother have been admitted to bail in the said case vide order dated 13.10.2020 passed by coordinate Bench of this Court. The first applicant, however, was directed to be released on bail after statement of the informant is recorded by the trial court.

In the backdrop of the aforesaid development, it is submitted by the learned counsel for the applicants that the instant case is a consequence arising from the alleged fraudulent document pertaining to the date of birth. The instant case does not disclose any new offence against the applicants. It is urged that the subsequent F.I.Rs. was lodged with malafide intention to multiply the number of criminal cases against the applicants, whereas, subsequent cases arise from mere corrections of the date of birth in various records including PAN and Passport issued to the second applicant recording the earlier incorrect date of birth. It is, thus, submitted that the allegations do not constitute the ingredients of the offence of forgery. The applicants are entitled to be enlarged on bail for the lesser offence of cheating and conspiracy.

In rebuttal, Shri Diwakar, learned counsel appearing for the State submits that the applicants are habitual offenders perpetuating fraud and forgery. Conduct of the applicants is such that on the strength of fraud, forgery and manipulation of various records, the applicants have caused wrongful loss to the State and commensurate wrongful gain to themselves. It is urged that second applicant is M.Tech and through out his career the date of birth recorded in his education certificates is 01.01.1993. Other documents namely, PAN, Passport, Passbook of the bank account etc. record the same date of birth.

It is, further, urged that in order to contest the Legislative Assembly election in 2017, the second applicant not having attained 25 years, conspired to fraudulently manipulate the date of birth. In 2015 applicants along with other co-accused conspired to obtain a fresh birth certificate upon interpolating the consigned record/register of Queen's Mary Hospital, Lucknow. On the strength of the birth certificate, registration was obtained with the Registrar, Birth and Death at Municipal Corporation, Lucknow, bearing number

NNLKOB2015-292611. It is urged that applicants are very influential persons and their writ runs from Lucknow to Rampur. The government and police officials cannot dare to question them. They are law unto themselves. At the relevant time first applicant was the Cabinet Minister of Local Bodies and Wakf. By misusing his position and office he conspired and managed in procuring a forged birth certificate of his son (second applicant) for wrongful gain. It is further submitted that on the strength of birth certificate subsequent forgery was perpetuated in all other records including PAN, Passport and Bank Accounts.

It is further urged that on the strength of the alleged corrected date of birth, second applicant contested the Assembly election. The election of second applicant came to be challenged before this Court in Election Petition No. 08 of 2017, which was allowed, election of the second applicant was set aside. It is urged that the judgment is a part of the case diary, wherein, the learned Court has noted and recorded the nature of forgery committed by the applicants in the consigned record of the Hospital. Thereafter, on the strength of the forged document, fresh registration certificate was obtained from Nagar Mahapalika, Lucknow. It is further urged that the Court has noted in the order that in the service record of Dr. Tazeen Fatima, wife of the first applicant and mother of the second applicant, as per her declaration, second applicant was born in 1993 and not in 1990 as alleged later. Dr. Tazeen is also a member of the Legislative Assembly. It is urged that the forged document was prepared after a gap of almost 22 years for ulterior purposes.

It is further urged that the applicants throughout have not cooperated with the investigation and have not responded to the summons of the court, consequently, coercive measures under

Section 82/83 Cr.P.C. was adopted. Applicants, thereafter, surrendered.

It is, finally, urged that applicants are habitual offenders, first applicant has criminal antecedents of 91 cases commencing since 1982, second applicant faces 44 cases and Dr. Tazeen Fatima has 32 cases pending against her. It is urged that most of the cases pertain to fraud and forgery, whereby, large parcel of land belonging to the Central and State Government has been usurped by the applicants and transferred to a private trust by manipulating revenue records, waqf deeds, and other documents. Applicants are not entitled to be enlarged on bail as there is reasonable apprehension of witnesses being tampered, considering their status, position and character.

I have considered the rival submissions and perused the voluminous record with the assistance of the learned counsel for the parties. The authorities relied upon by the respective counsels are not relevant while considering the bail applications.

The Supreme Court time and again has reminded the Courts of the settled principles to be considered while granting bail which include :

- i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- ii) nature and gravity of the charge;
- iii) severity of the punishment in the event of conviction;
- iv) danger of accused absconding or fleeing if released on bail;
- v) character, behaviour, means, position and standing of the accused;
- vi) likelihood of the offence being repeated;

- vii) reasonable apprehension of the witnesses being tampered with; and
- viii) danger, to the course of justice being thwarted by grant of bail.

The legislature for the purposes of bail has not used the expression “the evidence” nor “bail” has been defined. The court therefore is required to apply the settled principles to the facts and circumstances of the case while considering the application for bail.

Merely, for the reason that the applicants have been enlarged on bail in a case where allegation is of procuring forged document pertaining to date of birth cannot be viewed mechanically while considering the bail applications, in other cases, though, the genesis is rooted in forged date of birth. It cannot be said, in the given facts that the instant case is a consequence of the alleged corrections of the subsequent document based on the date of birth. There is allegation of criminal conspiracy, deception, misuse of office and position in procuring forged document by the first applicant to benefit the second applicant. The investigation reveals that in all records and documents pertaining to the second applicant, initially record the date of birth as 01.01.1993, whereas, the subsequent date of birth was obtained by the accused persons by forgery committed in the consigned record of the hospital. The forged date of birth was procured during the tenure of the first applicant being Cabinet Minister; Municipal Corporation was under his ministry. The allegations reflect deep rooted criminal conspiracy; gross misuse of position, exercise of coercion and threat in commission of the offence and perpetuating it.

Further, in the large number of FIRs lodged against the first applicant, allegations are that fraudulently government land admeasuring 13.842 hectares, declared and notified as Evacuee

Property in 1971 was grabbed by the first applicant for the trust managed by his family members. The property earlier belonged to a sunni muslim, who after partition migrated to Pakistan. The first applicant in criminal conspiracy with other officials forged documents and waqf deed of the year 1939. The sunni waqf property was got transferred and registered as a shia waqf, though the property had vested in the Custodian of the State. On the strength of forged and manipulated documents, the property was subsequently transferred to the family trust. That apart 5000 hectares of river bed vesting in the State has been grabbed; 6.917 hectare of public utility land has been usurped by forging revenue records. Private individuals have lodged as many as 26 FIRs, inter alia, alleging that the nominated police official at the behest of the first applicant, had booked the land holders in petty frivolous cases. It is alleged that in lockup they were mercilessly beaten and coerced to transfer their land holdings to the trust against their free will. It is urged by the State that the small land holders could muster courage to lodge FIRs hesitantly on being convinced that the first applicant and his family members would not harm them as long as they are behind the bars. The first applicant is an accused in all the cases.

The Court while considering the bail applications is conscious that personal liberty has to be weighed and balanced with societal/public interest at large, and ensure that the course of justice is not thwarted by the powerful and influential accused persons.

The evidence at the stage of bail cannot be scrutinised and discussed. The evidence, *prima facie*, link the applicants with the commission of the offence is sufficient. The ingredients of some of the offence is not made out, as urged by the counsel for the applicant, is not of much relevance in the backdrop of the principles

to be applied and considered in the facts and circumstances of a given case.

Having regard to the allegations that the applicants did not cooperate with the investigation and court proceedings, consequently, coercive measures had to be adopted against them. Further, having regard to the position and status of the accused persons, the repetition of the offences, and the deep rooted and pervasive influence, applicants exercise in the various departments of the State, there is reasonable apprehension of the witnesses being tampered with, and danger to the course of justice being thwarted. In the circumstances, grant of bail at this stage would not be in public interest.

The bail application is accordingly rejected.

The applicants are at liberty to approach the Court for bail after the witnesses of fact are examined in the trial.

In view of the mandate of the Supreme Court in **Ashwini Kumar Upadhyay vs Union Of India**,¹ the trial is expedited.

The trial Court shall proceed in accordance with law without being influenced by the observations made in the order.

Order Date :- 26.11.2020
Mukesh Kr.

¹ Writ Petition (Civil) No. 699 of 2016, order dated 10 September 2020