

Hazi Kasim vs State Of U.P. on 31 January, 2025

Author: Vivek Varma

Bench: Vivek Varma

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:14803

Court No. - 67

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24811 of 2024

Applicant :- Hazi Kasim

Opposite Party :- State of U.P.

Counsel for Applicant :- Ankit Agarwal

Counsel for Opposite Party :- G.A.,Sadrul Islam Jafri

Hon'ble Vivek Varma,J.

1. Heard counsel for the applicant, Shri Avesh Khan, holding brief of Shri Sadrul Islam Jafri, counsel for the informant in Case Crime No.694 of 2022 and learned A.G.A. for the State.

2. The instant bail application, under Section 439 Cr.P.C. has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 147 of 2004, under Sections 147, 148, 149, 307 IPC and 3/5/8 of Cow Slaughter Act and 7 Criminal Law Amendment Act and 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station- Khurja Dehat, District- Bulandshahar, during pendency of the trial.

3. Counsel for the applicant contends that the applicant was not arrested at the spot. Name of the applicant was disclosed by the co-accused who were arrested at the spot. After submission of charge

sheet, the applicant and two others challenged the proceedings before this Court by filing Application u/s 482 No.8334 of 2005 (Yakub and others vs. State of U.P. and another) and this Court vide order dated 5.7.2005 stayed the further proceedings of the aforesaid case. On 17.01.2020, the aforesaid 482 application was dismissed for want of prosecution. Meanwhile, the trial of other co-accused had commenced and the trial court vide order dated 15.5.2024 convicted the accused, who were arrested at the spot under Sections 3/5A/8 of the Cow Slaughter Act and directed them to undergo imprisonment of three years and a fine of Rs.10,000/- was imposed on each, whereas, the accused who were not arrested at the spot were acquitted. Counsel for the applicant submits that the case of the applicant stands on similar footing with that of co-accused who were not arrested at the spot. The applicant is ready to face the trial. The applicant was not aware of the dismissal of the application under Section 482 Cr.P.C. filed by him. Criminal history of the applicant has been explained in paragraph no.25 of the bail application. In all cases the applicant has been granted bail by the competent courts. Further, the allegations with regard to disturbing the public order, as also regarding gaining undue temporal, pecuniary, material or other advantage of like nature against the applicant are vague. The applicant is in jail since 13.06.2024 and in case he is enlarged on bail, he will not misuse the said liberty.

4. Learned A.G.A. as well as counsel for the informant in Case Crime No.694 of 2022, P.S. Khurja Nagar, District Bulandshahr have opposed the prayer for bail. They submit that the applicant has criminal antecedents.

5. After hearing the rival contentions, this Court prima facie finds that the applicant was not arrested at the spot. Name of the applicant was disclosed by the co-accused who were arrested at the spot. Identically placed co-accused (who were not arrested at the spot) have been acquitted by the trial court.

6. In so far as criminal antecedents of the applicant is concerned, it is not the case of the State that applicant might tamper with or otherwise adversely influence the investigation, or that he might intimidate witnesses before or during the trial. The State has also not placed any cogent material that applicant in past attempted to evade the process of law. In the opinion of this Court, if the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history, no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused, hence, the Court does not feel it proper to deny bail to the applicant just on the ground that he had criminal antecedent.

7. In Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446, the Apex Court in para 30 has observed:-

"We may hasten to add that when we state that the accused is a history-sheeter we may not be understood to have said that a history-sheeter is never entitled to bail. But, it is a significant factor to be taken note of regard being had to the nature of crime in respect of which he has been booked."

8. In the case of Prabhakar Tewari Vs. State of U.P. and another, 2020 (11) SCC 648, the Hon'ble Supreme Court has observed that pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail.

9. The principle that Bail is a rule and Jail is an exception has been well recognized by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51.

10. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. Learned A.G.A. for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interest of the public or State.

11. Further, the applicant has remained confined for more than seven months, there is no hope of early conclusion of trial and without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

12. Let the applicant- Hazi Kasim, involved in the aforesaid case be released on bail on his furnishing a personal bond and two heavy sureties (in view of criminal history) each in the like amount to the satisfaction of the court concerned subject to conditions that he:

(i) shall appear on the date fixed by the trial court;

(ii) shall not tamper with the prosecution evidence;

(iii) shall not pressurize the prosecution witnesses and

(v) shall appear on first Sunday of every month at the Police Station concerned.

13. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 31.1.2025 Manish Kr