

Abhishek Chauhan vs State Of U.P. Thru. Prin. Secy. Home U.P. ... on 1 April, 2025

Author: Manish Mathur

Bench: Manish Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:18041

Court No. - 13

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13037 of 2024

Applicant :- Abhishek Chauhan

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home U.P. Lko.

Counsel for Applicant :- Ashok Kumar Srivastava, Anshul Mishra, Avinash Srivastava, Pragya

Counsel for Opposite Party :- G.A.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for applicant, learned Additional Government Advocate appearing on behalf of State and perused the record.
2. This first bail application has been filed with regard to Case Crime No./F.I.R. No. 127 of 2021 under Section 409, 201 IPC, Police Station Jethwara, District Pratapgarh.
3. As per contents of FIR, the incident is said to have taken place on 20th July, 2020 when the bank received an email indicating decrease of Rs. 20,50,000/- from the A.T.M. concerned. It also states that on the said date and time, the applicant along with co-accused Vinay Shukla had

unauthorizedly visited the A.T.M and shown the aforesaid decrease. The F.I.R. also indicates that on the same date between the time of 13.53 and 16.22, the virtual dispensing was increased by the same amount. It also indicates that such a decrease and subsequent increase in the A.T.M. could have taken place only with the connivance of A.T.M. Engineer.

4. It has been submitted by learned counsel for applicant that he has been falsely implicated in the charges levelled against him. It is also submitted that there is no cogent explanation for the substantial delay in lodging of F.I.R. on 24th March, 2021. It is also submitted that a perusal of the F.I.R. ex facie indicates that there was no decrease in the physical currency notes available in the A.T.M. and therefore the very charge of embezzlement becomes baseless. It is also submitted that audit report relied upon by opposite parties in the counter affidavit is not a part of the case diary.

5. Learned A.G.A. has opposed bail application with submission that contents of F.I.R. clearly indicate complicity of applicant in the crime which has been committed since it indicates a decrease in the physical availability of currency notes as evident from the audit report dated 6th August, 2020 which has been brought on record as C.A.-1 to the supplementary counter affidavit. It is however admitted that applicant does not have any previous criminal history.

6. Upon consideration of submissions advanced by learned counsel for parties and upon perusal of material on record, prima facie subject to evidence led in trial, it appears that deficiency in the availability of cash in the A.T.M. has been exhibited only in a virtual manner without any substantial decrease in physical availability of the currency notes available in the A.T.M. even as per perusal of F.I.R. The aspects of audit report however will require consideration during trial. It is also evident that despite allegation having been levelled against with the A.T.M. Engineer, he has not been nominated in the F.I.R. which also appears to have been lodged highly belatedly without any explanation for same. The applicant is under incarceration since 23 October, 2024 without any previous criminal history.

7. Hon'ble the Supreme Court in Sanjay Chandra v. Central Bureau of Investigation, reported in (2012) 1 SCC 40 has specifically held that bail is to be a norm and an under-trial is not required to be in jail for ever pending trial. Relevant paragraphs of the judgment are as under :-

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty."

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution."

8. Looking to the nature of allegations levelled against the applicant and submission made in the bail application, without expressing any opinion on the merits of case and considering the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, particularly since no reasonable apprehension of tampering with the witnesses has been alleged, prima facie, this Court finds, the applicant is entitled to be released on bail in this case.

9. Accordingly bail application is allowed.

10. Let applicant Abhishek Chauhan involved in the aforesaid case 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 which are being imposed in the interest of justice:-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court, absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

Order Date :- 1.4.2025 prabhat