

Naseem @ Chand Babu vs State Of U.P. Thru. Prin. Secy. Home ... on 2 January, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:62

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11324 of 2024

Applicant :- Naseem @ Chand Babu

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

Counsel for Applicant :- Amit Kumar Awasthi, Shubham Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Rejoinder affidavit is taken on record.
2. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
3. This second bail application has been moved by the accused/applicant- Naseem @ Chand Babu for grant of bail, in Case Crime No.943 of 2020, under Sections 302, 341, 120-B I.P.C., Police Station Kotwali Sadar, District Kheri, during trial as his first bail application has been rejected vide order dated 02.01.2024 passed in Criminal Misc. Bail Application No.275 of 2022 by a Coordinate Bench of this Court presided over by Hon'ble Pankaj Bhatia, J.
4. This second bail application moved on behalf of the applicant has been placed before this Bench with the office report dated 23.11.2024 as the Hon'ble Judge, who has rejected first bail application

of the applicant, has released the matter.

5. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

6. It is further submitted that F.I.R. of this case has been lodged by the informant namely Mohd. Sakeel, who is not an eye witness of the incident and in the F.I.R. role of firing on the deceased by dragging him from the vehicle has been attributed to the applicant and the presence of two eye witnesses namely Shubham Kashyap and Arman has been shown in the F.I.R. and these two witnesses namely Shubham Kashyap and Arman in their statement recorded under Section 161 Cr.P.C. have also claimed to have seen the incident.

7. It is vehemently submitted that the prosecution has moved an application before the trial court dated 19.07.2024/12.09.2024 requesting to discharge these witnesses e.g. Shubham Kashyap and Arman on the ground that they have colluded with the accused persons and on the basis of this application, the trial court by passing order dated 23.09.2024 has discharged these witnesses. Thus the prosecution is now no more relying on the evidence of witnesses namely Shubham Kashyap and Arman.

8. It is also submitted that during the course of investigation one other witness namely Anees has emerged, who according to the case of the prosecution is also an eye witness of the crime, however, the statement of this witness was recorded before the trial court as P.W.-2 and he has not supported the case of the prosecution and has been declared hostile and on being cross examined by the State, he has also disowned his statement given under Section 161 Cr.P.C.

9. It is vehemently submitted that the whole prosecution case was resting on the evidence of three witnesses namely Shubham Kashyap, Arman and Anees, while two of such witnesses namely Shubham Kashyap and Arman have been discharged by the trial court in pursuance of the application moved by the prosecution and the third witness namely Anees has been declared hostile and has not supported the case of the prosecution thus there are material changes in the circumstances since rejection of first bail application of the applicant.

10. It is further submitted that the applicant was not having any previous criminal history from before lodging of the instant F.I.R., however, at the time alleged arrest of the applicant in the instant case, a fake case has been shown under Section 307 I.P. pertaining to police encounter, wherein bail application shall be moved if the plea of bail is found favour by this Court in this case. Similarly placed co-accused persons of the alleged crime, namely, Iqrar Hussain, Chand Babu @ Samar and Saleem @ Bhainda have been released on bail by the Coordinate Benches of this Court as well as by this Court vide orders dated 18.06.2021, 16.07.2021 and 19.02.2021 passed in Criminal Misc. Bail Application Nos.1513 of 2021, 1778 of 2021 and 9753 of 2020, respectively.

11. It is next submitted that applicant is in jail in this case since 28.08.2020 and has not done anything, which may occur in the delay of trial and there is no apprehension that after being

released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

12. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the role of firing has been attributed to the applicant and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

13. Having heard learned counsel for the parties and having perused the record, it is evident that first bail application of the applicant was rejected by a Coordinate Bench of this court and while rejecting first bail application of the applicant, the Coordinate Bench has simultaneously given directions to the trial court to culminate the same within a period of one year from date of passing of the order i.e. 02.01.2024. Though this second bail application appears to have been moved before expiry of the said period, but as of now the period of one year appears to have elapsed and thus this second bail application may not be termed as premature.

14. Coming to the merits of the case, the case of the prosecution was based on the evidence of three prosecution witnesses namely Shubham Kashyap, Arman and Anees. Two of such witnesses have been discharged by the trial court on the request made by the prosecution namely Shubham Kashyap and Arman and the third prosecution witness namely Anees has appeared in the witness box and has not supported the case of the prosecution and thus it is submitted with considerable force that chance of conviction of the application is remote as the informant is not an eye witness of the alleged crime. It appears to be true that before lodging of the instant F.I.R., the applicant was not having any criminal antecedents. Similarly placed co-accused persons of the alleged crime, namely, Iqrar Hussain, Chand Babu @ Samar and Saleem @ Bhainda have been released on bail by the Coordinate Benches of this Court as well as by this Court. Applicant is in jail in this case since 28.08.2020. The presence of the applicant could be secured before the trial court by placing adequate conditions.

15. Having regard to the overall facts and circumstances of the case and keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus allowed.

16. Let the accused/applicant- Naseem @ Chand Babu involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(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.

17. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.
18. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.
19. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

Order Date :- 2.1.2025 Anupam S/-