

Javed Alias Pappu Ganjia 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:14882

Court No. - 67

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 25513 of 2024

Applicant :- Javed Alias Pappu Ganjia

Opposite Party :- State of U.P.

Counsel for Applicant :- Patgendra Bhushan Mishra, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Heard Shri Kamal Krishna, learned Senior Advocate assisted by Shri Patgendra Bhushan Mishra, counsel for the applicant and Shri Manish Goel, learned Additional Advocate General for the State. Perused the record.

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.64 of 2024, under Sections 419, 420, 467, 468, 471, 120-B, 506 I.P.C., Police Station- Naini, District- Prayagraj, during pendency of the trial.

3. In brief, the prosecution story states that the informant inherited plot no.40/2 admeasuring 0.217 hectares and plot no.59/2 admeasuring 0.126 hectares situated at Madhavpur, Uparhar, Tehsil Karchhana from her late brother Babbu who died issueless. The co-tenure holders land mafia Pappu

Ganjia (applicant) Miraj Uddin, Anwar Thekedra, Noor Mohammad are illegally occupying her land against which she gave several applications, however no action was taken upon them. The informant alleged that on her application for demarcation, the Lekhpal submitted a report under the influence of the accused persons that demarcation is not possible. It was also alleged that since informant's brother was killed by the accused persons for which case is pending before the court concerned, they are threatening the informant and her brother Bheeru.

4. Counsel for the applicant contends that the applicant has been falsely implicated in the instant case. Earlier the applicant was granted bail in Case Crime No.257 of 2022, u/s 386, 323, 504, 506 I.P.C., P.S. Naini, District Prayagraj by this Court vide order dated 11.10.2023. Immediately thereafter, an F.I.R. was lodged against the applicant on 18.11.2023 registered as Case Crime No.599 of 2023, u/s 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986. In the said case also, the applicant was granted bail by this Court vide order dated 19.3.2024 passed in Criminal Misc. Bail Application No.370 of 2024 (Mohd. Javed @ Pappu Ganjia vs. State of U.P.). Further, prior to the lodging of the instant first information report, the informant submitted an application to the Chief Minister. The application was marked for suitable inquiry to the District Magistrate and was allotted a reference number 15175230269317. After conducting an inquiry into the matter, the concerned Tehsildar submitted his report that the informant/complainant had not provided the family tree in order to ascertain her share in the disputed property and as such the status of possession could not be ascertained. Thereafter, the Sub Divisional Magistrate, Karchana, Prayagraj submitted his report to the District Magistrate on 24.01.2024. In this report he considered the inquiry made by the Tehsildar and stated that the informant/complainant has been intimated that the relief sought by her could only be granted by instituting a case before the court of competent jurisdiction. Thereafter, the instant first information report has been lodged on 01.02.2024. It is contended that the dispute is of civil nature and the informant has attempted to cloak it with a criminal flavour to harass the applicant. The applicant is not encroaching upon the property of the first informant. The deceased brother of the first informant died a natural death. The grievance of the informant regarding demarcation of boundaries can only be addressed by filing an application under Section 24 of the U.P. Revenue Code and not by instituting a complaint on the IGRS Portal or lodging the F.I.R. Neither any civil suit nor any application under Section 24 of the U.P. Revenue Code has been instituted by the informant. It is next contended that the other co-accused persons, after submission of charge sheet, filed an Application under Section 482 No.27344 of 2024 (Anwar Ali and another vs. State of U.P. and another) challenging the entire proceedings as well as cognizance/summoning order dated 5.7.2024 and this Court vide order dated 21.11.2024 has stayed the proceedings of the concerned court/trial court against them. It is also contended that there is no allegation in the F.I.R. that the applicant fabricated any document, as such, there is no occasion of attracting the provisions of Sections 467, 468, 471 I.P.C. There is also no allegation that the applicant induced or deceived the first information in any manner or misrepresented any fact before the first informant, as such the essentials of cheating are completely absent to the present case and therefore invocation of Sections 419 and 420 I.P.C. are bad in law. Further, there is no allegation that the applicant intended to cause alarm to the first informant, as such, Section 506 I.P.C. is not attracted. There is also no allegation that the accused persons entered into any agreement for commission of any unlawful act and thus Section 120-B I.P.C. is also not attracted to the allegations made in the first information report. It is next contended that the applicant has criminal history of

fourty four (44) cases. The same has been explained in paragraph nos.34 to 78 of the bail application. Out of fourty four (44) cases shown against the applicant, seven cases relates to Section 110G Cr.P.C. which have become infructuous by efflux of time, in six cases of Goonda Act the applicant has been acquitted, three cases have been wrongly shown against the applicant; in two cases final report in favour of the applicant has been submitted, in seventeen criminal cases the applicant has been acquitted by the trial court and at present only nine criminal cases are pending against the applicant in which the applicant is on bail. The details of the same has also been mentioned at page 162 of the paper book. The applicant is in jail since 09.04.2024. In case he is enlarged on bail, he will not misuse the said liberty.

5. Learned A.A.G. has opposed the prayer for bail. He submits that the applicant has criminal antecedents.

6. After hearing the rival contentions, this Court prima facie finds that the dispute is of civil nature. With regard to other co-accused this Court vide order dated 21.11.2024 passed in Application u/s 482 No.27344 of 2024 (Anwar Ali and another vs. State of U.P. and another) has stayed the proceedings of the concerned court/trial court. There is no allegation in the F.I.R. that the applicant fabricated any document or the applicant induced or deceived the first informant in any manner or misrepresented any fact before the first informant. Further, there is also no allegation that the applicant intended to cause alarm to the first informant or that the accused persons entered into any agreement for commission of any unlawful act.

7. 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. Further, from the record, it is evident that the State has also not filed any appeal against the orders of acquittal. In seventeen cases the applicant has been acquitted by the concerned court. The applicant is not convicted in any case. In rest of the cases either the applicant has been granted bail or the proceedings have become infructuous due to lapse of time. 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.

8. 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."

9. 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.

10. 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.

11. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. Learned A.A.G. 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.

12. Further, the applicant has remained confined for more than nine months, charge sheet has been submitted against the applicant and there is no hope of early conclusion of trial. Without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

13. Let the applicant- Javed Alias Pappu Ganjia, 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.

14. 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