Abhishek Alias Vikram vs State Of U.P. on 1 May, 2025

Author: Ashutosh Srivastava

Bench: Ashutosh Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:87299

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3384 of 2025

Applicant :- Abhishek Alias Vikram

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhishek Gupta,Mehtaab Alam,Pankaj

Counsel for Opposite Party :- G.A.

Hon'ble Ashutosh Srivastava,J.

1. Rejoinder affidavit file today, which is taken on record.

2. Heard Sri Pankaj learned counsel for the applicant, Sri Purushottam Maujrya, learned Additional Government Advocate for the State-Respondent, and perused the record.

3. The present bail application has been filed on behalf of applicant Abhishek @ Vikram with a prayer to release her on bail in Case Crime No. 127 of 2024, under Section 2/3 of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986, registered at Police Station Sector-113 NOIDA, District Gautam Budh Nagar, during pendency of the trial.

4. It has been submitted by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in this case due to ulterior motive. The present case has been imposed upon the applicant on the basis of cases mentioned in the gang chart. Learned counsel for the applicant submits that the allegation against the applicant is that the applicant along with co-accused is operating a gang and the applicant is a member of the said gang and is habitual to commit offence under Chapter 17 and 22 of the IPC. Learned counsel for the applicant submits that applicant is having criminal history of 41 cases including the present case. All the FIRs were lodged against the applicant with mala fide intention for the purpose of harassment. It is next submitted that there is also no possibility of the applicant either fleeing away from the judicial process or tampering with the witnesses. The applicant, who is languishing in jail since 28.09.2024 undertakes that he will not misuse the liberty, if granted. It has also been pointed out that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

5. Per contra learned A.G.A. has opposed the prayer for bail of the applicant and submits that the applicant is a habitual offender and similar nature of crimes are being committed by the applicant and other gang members. He submits that section 2(b) of the Uttar Pradesh gangsters and anti-social activities (prevention) act, 1986 defines the term "Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities. The applicant and other co-accused persons operate an organized gang and commit offences punishable under Indian penal code. He further submits that the offence committed by the applicant and other co-accused comes within the preview of section 2(b)(iv) of the Uttar Pradesh gangsters and anti-social activities (prevention) act, 1986 "preventing or attempting to prevent any public servant or any witness from discharging his lawful duties".

6. He further submits that apart from the present case, applicant has a history of 34 other criminal cases to his credit. The applicant and other co-accused persons are professional criminals and there are several criminal cases of extortion, cheating and fraud lodged by different persons against them in different police stations of district Gautam Budh Nagar.

7. Learned AGA has cited certain case law in order to substantiate his arguments, the relevant paragraphs of the case law which are as under:-

> Criminal Misc. Bail Application No. 8930 of 023 (Mohd. Afzal Vs. State of U.P.) 20 (I) Ashok Kumar Dixit vs. State of UP : AIR 1987 All 235
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> 151. We are unable to uphold the submission. The impugned Act is designed to deal with a lass of crime which is entirely distinct from the ordinary offences, and the accused involved may be such as against whom it may be difficult to collect evidence sometimes. Consequently, if the Legislature made a provision for larger period of remand than contemplated by sub-s. (2) of S. 167, Cr. P.C., it may not be possible to hold sub-s. (2) of S. 19 to be ultra vires on that ground.

152. Further first remand is granted by the Judicial Magistrate or by the Executive Magistrate which cannot exceed more than sixty days. Any further remand is granted only by the special Judge after satisfying himself as to the desirability of granting further time to the investigating officer for completing the investigation. The discretion to grant remand for a period of sixty days is thus vested in a Judicial Officer, namely, the Special Judge who may disallow further remand asked for by the investigating agencies, if grounds for the same are not made out. Power of further remand is not with any executive authority. We therefore, do not see any unconstitutionality in S. 19(2) of the Act.

153. Arguments were also advanced before us challenging the validity of Cl. (e) of S. 2, U.P. Act. 7 of 1986, in so far as it provided that even a person in whose welfare the public servant is interested would be a member of his family. Clause (e) provides:? 4 AIR 1987 All 235 [6] "Member of the family of a public servant means his parents or spouse and brother, sister, son, daughter, grandson, granddaughter or the spouses of any of them, and includes a person dependent on or residing with the public servant and a person in whose welfare the public servant is interested."

154. We find that the aforesaid definition of member of the family of a public servant is extremely vague and incapable of being worked out. How could a person in whom a public servant is interested be a member of his family. This definition including any person in whose welfare the public servant if interested is extremely vague, and, as such is liable to be held as unreasonable. As a result whereof, we hereby find that the phrase" and a person in whose welfare the public servant is interested" is unconstitutional on the ground of being unreasonable and violative of Art. 14 of the Constitution. However, since this clause is capable of being severed from the remaining, it is not correct to argue that the whole of cl. (e) of S. 2 would have to be struck down.

155. These petitions had been filed mainly on the ground that U.P. Act 7 of 1986 was ultra vires the Constitution. We have not been able to find substance in any one of the grounds of attack of the Act. So far as our power to quash the investigation and the proceedings pending before the Special. Judges challenged in some of the writ petitions before us, are concerned, we are of opinion that this is not possible to be done in these cases. Judicial opinion seems to be settled and we have several authorities of the Supreme Court where interference by the Court into police investigation has been disapproved. This question arose in connection with an application under S. 561A Criminal P.C. in an appeal in State of West Bengal v. S.N. Basak, AIR 1963 SC 447. Kapoor, J. quoted with approval the observations of the Judicial Committee in the case of Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18, where the Privy Council observed:

"The functions of the judiciary and the police are complementary not overlapping, and the combination of individual liberty with a due observance of law and order is

> only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to interfere in an appropriate case when moved under S. 491, Criminal P.C. to give directions in the nature of habeas corpus."

156. This view was followed by the Supreme Court in State of West Bengal v. Sampat Lal, (1985) 1 SCC 317 : AIR 1985 SC 195 and Eastern Spinning Mills Shri Virendra Kumar Sharda v. Rajiv Poddar, 1989 Supp (2) SCC 385 : AIR 1985 SC 1668. In this case, the Supreme Court observed: [7] "We consider it absolutely unnecessary to make a reference to the decision of this Court and they are legion which have laid down that save in exceptional cases where non-interference would result in miscarriage of justice, the Court and judicial process should I not interfere at the stage of investigation of offences."

157. Of course, the decisions cited above were in connection with S. 482, Cr. P.C., but the scope of interference under Art. 226 of the Constitution is narrower. The power of superintendence of the High Court under Art. 226 being extraordinary is to be exercised sparingly and only in appropriate cases. The power to issue certiorari cannot be invoked to correct an error of fact which a superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot in exercising its jurisdiction under Art. 226 convert itself into a Court of appeal when the legislature has not chosen to confer such a right.

158. The High Court's function is limited to see that the subordinate court or Tribunal or authority functions within the limits of its power. It cannot correct errors of fact by examining the evidence.

159. In a writ petition filed under Art. 32 of the Constitution, the argument made on behalf of the petitioner of that case that there I was no material whatsoever to warrant the framing of charges, hence, the entire proceedings were liable to be quashed. The Supreme Court in Raghubir Singh v. State of Bihar, (1986) 4 SCC 481 : AIR 1987 SC 149, repelled that argument by saying: "It was strenuously contended by Sri Jethmalani that there was no material whatsoever to warrant the framing of charges for any of the offences mentioned in the charge sheet other than S. 165A. We desire to express no opinion on this question. It is not a matter to be investigated by us in a petition under Art. 32 of the Constitution. We wish to emphasise that this Court cannot convert itself into the Court of a Magistrate or a Special Judge to consider whether there is evidence or not justifying the framing of charges".

160. For the reasons given above, all the writ petitions fail and are dismissed with costs. Interim order shall stand vacated.

(II) Dharmendra Kirthal vs. State of UP : (2013) 8 SCC 368

45. It is apposite to note here that there is a distinction between an accused who faces trial in other courts and the accused in the Special Courts because the accused herein is tried by the Special Court as he is a gangster as defined under Section 2(c) of the Act and is involved in anti-social activities with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person. It is a crime of a different nature. Apart from

normal criminality, the accused is also involved in organised crime for a different purpose and motive. The accused persons under the Act belong to an altogether different category. The legislature has felt that they are to be dealt with in a different manner and, accordingly, the trial is mandated to be held by the Special Courts in an expeditious manner. The intention of the legislature is to curb such kind of organised crimes which have become epidemic in the society.

(III) State of Maharashtra vs. Vishwanath Maranna Shetty : (2012) 10 SCC 561

29. While dealing with a special statute like MCOCA, having regard to the provisions contained in sub-section (4) of Section 21 of this Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. In view of the above, we also reiterate that when a prosecution is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, these provisions cannot be ignored while dealing with such an application. Since the respondent has been charged with the offence under MCOCA, while dealing with his application for grant of bail, in addition to the broad principles to be applied in 6 (2012) 10 SCC 561 [14] prosecution for the offences under IPC, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind. It is also further made clear that a bare reading of the non obstante clause in sub-section (4) of Section 21 of MCOCA that the power to grant bail to a person accused of having committed offence under the said Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 but also subject to the restrictions placed by clauses (a) and (b) of subsection (4) of Section 21. Apart from giving an opportunity to the prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. The satisfaction contemplated in clauses (a) and (b) of sub-section (4) of Section 21 regarding the accused being not guilty, has to be based on "reasonable grounds". Though the expression "reasonable grounds" has not been defined in the Act, it is presumed that it is something more than prima-facie grounds. We reiterate that recording of satisfaction on both the aspects mentioned in clauses (a) and (b) of sub-section (4) of Section 21 is sine qua non for granting bail under MCOCA.

30. The analysis of the relevant provisions of MCOCA, similar provision in the NDPS Act and the principles laid down in both the decisions shows that substantial probable cause for believing that the accused is not guilty of the offence for which he is charged must be satisfied. Further, a reasonable belief provided points to existence of such facts and circumstances as are sufficient to justify the satisfaction that the accused is not guilty of the alleged offence. We have already highlighted the materials placed in the case on hand and we hold that the High Court has not satisfied the twin tests as mentioned above while granting bail.

(IV) Collector of Customs v. Ahmadalieva Nodira : (2004) 3 SCC 549

8. In the aforesaid background, this does not appear to be a case where it could be reasonably believed that the accused was not guilty of the alleged offence. Therefore, the grant of bail to the accused was not called for. The impugned order granting bail is set aside and the bail granted is cancelled. The respondent-accused is directed to surrender to custody forthwith. Additionally, it shall be open to the trial court to issue notice to the surety and in case the accused does not surrender to custody, as directed, to pass appropriate orders so far as the surety and the amount of security are concerned. It is made clear that no final opinion on the merit of the case has been expressed in this judgment, and whatever has [16] been stated is in the background of Section 37 of the Act for the purpose of bail.

(V) Kamlesh Pathak v. State of UP : 2024 SCC OnLine All 2669

17. Section 12 of U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 provides that trial under the Act of any offence by special court shall have precedence over the trial of any other case against the accused in any other court and shall be concluded in preference to the trial of such other case and accordingly trial of such other case shall remain in abeyance. The validity of the aforesaid Act was in question before the Hon'ble Supreme Court in the case of Dharmendra Kirthal v. State of U.P., (2013) 8 SCC 368. The Apex Court after detail analysis, upheld the constitutional validity of Section 12 of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 by holding that it does not infringe any of the facets of Articles 14 and 21 of the Constitution of India.

18. Accordingly, it goes without saying that the case against the applicant under the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 shall have precedence over the trial of any other case against the accused.

9. I have heard learned counsel for the parties and perused the record.

10. Along with the present case, other FIRs have been registered against the applicant and other co-accused persons, as such, inference can be drawn against the applicant that he along with other co-accused persons is operating an organized gang. The totality of circumstances and the gravity of offence mentioned in the said FIRs go against the applicant.

11. The instant case registered against the applicant does not seem to be misuse of the act as the applicant and other co-accused persons associated with the applicant have a criminal long criminal history.

12. Thus, there is no reasonable ground for this Court to believe that the applicant is not a guilty of such offences and applicant is not likely to commit any offence in future while on bail, as is the requirement of Section 19 (4) of the U.P. Gangster Act.

13. Considering the submissions of learned counsel for the parties, nature of allegations, gravity of offence and all attending facts and circumstances of the case, the Court is of the opinion that it is not

a fit case for bail. Hence, bail application of the applicant is hereby rejected.

14. It is made clear that observation made herein-above are limited to the facts brought in by the learned counsel for the parties pertaining to the disposal of the bail application and the aforesaid observations shall have no bearing on the merits of the case during trial.

Order Date :- 1.5.2025 v.k.updh.