

Sushil Kumar Mishra vs State Of U.P. on 1 April, 2025

Author: Samit Gopal

Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44575

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 17258 of 2024

Applicant :- Sushil Kumar Mishra

Opposite Party :- State of U.P.

Counsel for Applicant :- Amrendra Nath Mishra,Pranav Tiwary

Counsel for Opposite Party :- Anirudh Kumar Upadhyay,Arvind Agrawal,G.A.

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Manish Tiwary learned Senior Advocate assisted by Sri Pranav Tiwary, learned counsel for the applicant, Sri Arvind Agrawal, learned counsel for the first informant, Sri Ajay Singh, learned AGA-I for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Sushil Kumar Mishra, seeking enlargement on bail during trial in connection with Case Crime No.100 of 2022, u/s 147, 148, 149, 352, 323, 306, 504, 506 IPC, registered at Police Station Kotwali, District Basti.

4. This is a second bail application. The first bail application of the applicant was rejected vide order dated 30.10.2023 passed by this Court passed in Criminal Misc. Bail Application No.22489 of 2023.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that earlier the applicant Sushil Kumar Mishra was granted anticipatory bail by a coordinate Bench of this Court vide order dated 27.5.2022 passed in Criminal Misc. Anticipatory Bail Application No.3340 of 2022 (Sushil Kumar Mishra Vs. State of U.P. and another) against which the first informant Vivekanand Mishra preferred an appeal before the Apex Court numbered as Criminal Appeal No.1096 of 2022 (Vivekanand Mishra Vs. State of U.P. and another) which was allowed by a judgement and order dated 29.7.2022 and the impugned judgement therein was set-aside. The Apex Court in its judgement and order in para nos.8 and 9 has considered the said C.C.T.V. Footage and has held that the accused-respondent or his mother did not give any explanation as to how the C.C.T.V. Footage was obtained or how the C.C.T.V. Footage was transferred to Pen Drive. In continuation of the same it is submitted that the said C.C.T.V. Footage contained certificate under Section 65-B of the Indian Evidence Act and the Forensic Science Lab gave its report that the same is not tampered. The copies of the said documents have been placed before the Court as Annexure No.35 to the affidavit filed in support of bail application. It is further argued that the matter was taken up for further investigation and the first informant has been made as an accused in the same and report has been submitted by the investigating agency which is also before the trial court concerned. It is submitted that the same are new facts which may be considered. The applicant is in jail since 6.4.2023.

6. Per contra learned counsel for the first informant opposed the prayer for bail and argued that there is dying-declaration in the matter. It is submitted that the anticipatory bail application of the applicant although was allowed by this Court but the Apex Court set-aside the said order by means of a detailed judgement. It is submitted that the first bail of the applicant was rejected by this Court on 30.10.2023 and the said dying-declaration was handed over on 3.10.2023 which was prior to the rejection of the first bail application and as such is not a new fact at all. It is further submitted that the matter was taken up for further investigation on the basis of a letter dated 13.6.2023 of a Member of Parliament who was totally unconnected with the matter and the investigation in the matter concluded. It is submitted that previously the investigation in the matter had concluded and a charge sheet dated 16.6.2022 was submitted on which the court concerned had taken cognizance on 1.7.2022 after which the letter of the said Member of Parliament was sent which was sent after about 11 months of taking cognizance upon the said charge sheet. The cognizance as taken by the court concerned is a valid cognizance. There is no fresh and new ground in the present bail application. The same be dismissed.

7. Learned counsel for the State also opposed the prayer for bail and submitted that the first bail application of the applicant has been rejected by this Court by a detailed order on 30.10.2023. It is submitted that there is dying-declaration implicating the applicant in which active role of participation has been given to the applicant. Further there is no fresh and new ground in the bail application and the arguments of learned counsel for the first informant are adopted.

8. After hearing the counsel for the parties and perusing the record, it is evident that this is a second bail application. The first bail application of the applicant was rejected by this Court vide order dated 30.10.2023, the said order reads as under:-

"1. Shri Gaurav Kumar Shukla, learned counsel for the applicant, Shri Anirudh Kumar Upadhyay, learned counsel for the first informant and Shri Devendra Nath Mishra, learned counsel for the State are present.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Sushil Kumar Mishra seeking enlargement on bail during trial in connection with Case Crime No. 100 of 2022, under Sections 147, 148, 149, 352, 323, 306, 504 and 506 I.P.C., Police Station Kotwali, District Basti.

3. The first information report of the matter was lodged on 11.02.2022 by Vivekanand Mishra against the applicant and six other persons alleging therein that his neighbour Vijay Nath Mishra had dispute with him with regards to property, regarding which a suit which is pending. On 11.02.2022, due to construction of a balcony which was being done by Vijay Nath Mishra, he went to the place and told him to stop it on which they tried to enter into maar-peet and after which Vijay Nath Mishra and the other accused persons including applicant at about 11.00 a.m. started abusing and armed with lathi, sariya, knife and hammer assaulted him due to which, he received lot of injuries. Krishnavati, wife of Vijay Nath Mishra and Reeta Mishra his daughter were exhorting, on seeing him receiving injuries, his sister Kanya Kumari came shouting to save him on which the accused persons assaulted her and set her on fire. The persons of nearby and neighbours on hearing shout, reached the place of occurrence to intervene. His sister was taken to the District Hospital from where looking to her condition, she was referred to the Medical College where she is being treated.

4. Learned counsel for the applicant argued that general role has been assigned to the applicant and six other co-accused persons of assault upon the first informant and also upon the sister Kanya Kumari and of setting her on fire. It is argued that a dying declaration is alleged to have been recorded of the deceased Kanya Kumari on 12.02.2022 in which she has given general role to all the accused persons including the applicant of pouring oil on her and setting her on fire. It is argued that there is a CCTV footage of the place of occurrence which shows that after the fight between the parties, the deceased Kanya Kumari set herself on fire and sustained burn injuries. It is argued that the said CCTV footage was sent to the Forensic Science Lab which was examined and a report was sent stating of its genuinity. It is further argued that co-accused Prabhat Kumar Mishra has been granted bail by a co-ordinate Bench of this Court vide order dated 24.01.2023 passed in Criminal Bail Application no. 18564 of 2022, Prabhat Kumar Mishra vs. State of U.P., co-accused Pawan Mishra has been granted bail vide order dated 24.01.2023 passed in Criminal Misc. Bail Application No. 16515 of 2022, Pawan Mishra vs. State of U.P., Virendra Mishra has been granted

bail vide order dated 24.01.2023 passed in Criminal Misc. Bail Application No. 24035 of 2022, Virendra Mishra vs. State of U.P., co-accused Vijay Nath Mishra has been granted bail vide order dated 17.02.2023 passed in Criminal Misc Bail Application No. 7564 of 2023, Vijay Nath Mishra vs. State of U.P. The copies of the said orders have been placed before the Court which are annexure no. 12 to the affidavit in support of the bail application. It is argued that as such, the bail application be allowed.

5. The applicant is having no criminal history as stated in paragraph no. 26 of the affidavit in support of the bail application and is in jail since 06.04.2023. It is further argued that the first information report was initially lodged under Sections 147, 148, 149, 352, 323, 326, 504 IPC, but during investigation, Section 326 IPC was deleted and Section 306 IPC was added in it.

6. Learned counsel for the applicant argued that there is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased, the applicant has no mens-rea at all, there is no overt act whatsoever of the applicant, which resulted in the death of the deceased, the applicant has no motive at all to commit the aforesaid offence.

7. Per contra, learned Counsel for the State and learned counsel for the first informant vehemently opposed the prayer for bail. It is argued that initially the applicant was granted anticipatory bail vide order dated 27.05.2022 passed in Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No. 3340 of 2022 against which the informant filed a SLP (Criminal) No. 6166 of 2022 which was allowed by the Apex Court vide order dated 29.07.2022 and the order of the High Court was set aside. It is argued that then the applicant did not surrender, but absconded for nine months and it was only when coercive measures were taken against him, he surrendered on 06.04.2023. It is further argued by learned counsel for the first informant that anticipatory bail of co-accused Virendra Mishra was rejected by this Court vide order dated 29.04.2022 passed in Criminal Misc. Anticipatory Bail Application No. 3224 of 2022, Virendra Mishra vs. State of U.P. and anr. The copy of the order has been produced before the Court which is taken on record. It is argued that Subhadra Kumari, the mother of the deceased has supported the prosecution case which gets corroboration from the dying declaration of the deceased in which the applicant and the other accused persons are stated to have poured kerosene on her daughter and set her on fire. It is argued that the deceased received 86% burn on front of her body. The doctor where she was taken in an injured condition, opined the object of causing injury is kerosene oil, as its smell was present. It is argued that the applicant did not even consider and respect the order of the Apex Court inasmuch after the SLP of the informant was allowed and the order granting anticipatory bail of the applicant was set aside, he absconded for nine months and it was only after coercive measures were issued against him, he surrendered. It is further argued that paragraph nos. 12 and 13 of the affidavit in

support of the bail application states in specific terms that the applicant Sushil Kumar Mishra lodged FIR as against Case Crime No. 396 of 2021, Police Station Kotwali, District Basti, but the said fact is incorrect fact inasmuch as the copy of the first information report which is annexed as annexure no. 8 to the bail application would go to show that the said FIR was lodged by Vijay Nath Mishra and not by Sushil Kumar Mishra, the applicant. It is further argued that identically in paragraph no. 13, it is stated that the applicant Sushil Kumar Mishra lodged FIR as Case Crime No. 491 of 2021, Police Station Kotwali, District Basti which is also incorrect as a reading of the said FIR which is annexed as annexure no. 9 to the affidavit would go to show that the same was also lodged by Vijay Nath Mishra and not by the applicant. It is argued that the abscondence of the applicant, nature of evidence, the statement of Subhadra Kumari and medical evidence, the applicant is involved in the present case and the case is of the applicant along with co-accused persons pouring kerosene on the deceased and setting her on fire. The bail application be thus, rejected.

8. After having heard learned counsel for the parties and perusing the records, it is evident that the applicant is named in the FIR. He is also named in the dying declaration of the deceased along with other co-accused persons. The role assigned is of pouring kerosene on the deceased with other co-accused persons and setting her on fire. The applicant was granted anticipatory bail by a co-ordinate Bench of this Court. The said order was challenged before the Apex Court wherein the said order was set aside. After the same, the applicant absconded for nine months and it was only after coercive measures issued against him he surrendered. There is no explanation for the abscondence of nine months of the applicant after the order of the Apex Court, this shows his highest disregard for courts of law. Insofar as co-accused persons are concerned, although, they have been granted bail by co-ordinate benches of this Court, but the orders cannot be binding on this Court. Parity may be one of the considerations while considering the bail application, but cannot be the sole and only criteria for decision of the bail application.

9. Looking to the facts of the case, the medical evidence, conduct of the applicant and the nature of the case, this Court does not find it a fit case for bail, hence, the bail application is rejected."

9. The report of the Forensic Science Lab states that the CCTV Footage is not tampered and the fact that the matter was investigated further and the first informant has been made as an accused are subject matter of trial. The trial court has taken cognizance on the charge sheet dated 16.6.2022 on 1.7.2022. The same is a valid cognizance and any material coming subsequent to it is for the trial court to consider as per law. No fresh and new ground for bail is made out.

10. Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is rejected.

(Samit Gopal, J.) Order Date :- 1.4.2025 Gaurav Kuls