

Rashu Kumar vs State Of U.P. on 2 January, 2025

Author: Samit Gopal

Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:387

Court No. - 78

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44209 of 2024

Applicant :- Rashu Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Neeja Srivastava, Sr. Advocate, Veerendra Singh

Counsel for Opposite Party :- Abhimanu Mishra, G.A., Indra Deo Mishra

Hon'ble Samit Gopal, J.

1. Heard Sri V.P. Srivastava, learned Senior Advocate assisted by Ms. Neeja Srivastava, learned counsel for the applicant, Sri Indra Deo Mishra, learned counsel for the original complainant and Sri Ajay Singh, learned A.G.A.-I and perused the material on record.

2. This second bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Rashu Kumar, seeking enlargement on bail during trial in connection with Case Crime No. 2 of 2024, under Section 7 of P.C. Act, registered at P.S. Bareilly Sector Vigilance Cell, District Bareilly.

3. The first bail application of the applicant was rejected by this Court vide order dated 04.09.2024 passed in Crl. Misc. Bail Application No. 28368 of 2024 (Rashu Kumar Vs. State of U.P.). The said

order reads as under:

"1. Heard Sri G.S. Chaturvedi, learned Senior Advocate assisted by Ms. Somya Chaturvedi, learned counsel for the applicant, Sri Indra Deo Mishra, learned counsel for the first informant and Sri Ram Prakash Shukla, learned counsel for the State and perused the material on record.

2. Learned counsel for the State submits that he has received instructions in the matter for which time was granted to him on 01.08.2024.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Rashu Kumar, seeking enlargement on bail during trial in connection with Case Crime No. 02 of 2024, under Section 7 of P.C. Act, registered at Police Station Bareilly Sector (Vigilance Establishment), District Bareilly.

4. The facts of the case are that a complaint was given by Dharmendra Kumar to Anti-corruption Department that he is a Supervisor of Maharana Pratap Sewa Sansthan which runs a school and has done work of distribution of mid-day meal. The payment of the work was done by the District Basic Siksha Adhikari on 26.02.2024. He then moved an application for grant of No Objection Certificate but despite passing of a long time, the same was not issued and then he went to the office of the BSA where on the road he met Rashu Chauhan the present applicant and enquired about his NOC who demanded Rs. 50,000/- bribe for preparation of the file and then signature on it. He expressed his inability to pay the money and requested for issuance of the NOC to him. After waiting for about 1 months he then on 18.05.2024 again gave an application in the office of the BSA for the same but the NOC has not been given to him by Rashu Chauhan the District Coordinator (Mid-day Meal). On 20.06.2024 he again contacted in the office of the BSA to Rashu Chauhan who again demanded the bribe money and stated that he had asked for money earlier and had told to give the NOC. He then told to him that he would come and arrange the money and came back and he does not want to give money and wants him to be arrested while taking bribe. Enquiry and pre-trap proceedings were conducted, after which subsequently a trap was laid in which two officers were nominated by the District Magistrate concerned to be the independent witnesses. Subsequently on 22.06.2024 as decided earlier at about 05:15 pm a trap was laid and the accused applicant was arrested accepting bribe of Rs. 50,000/-. The trap proceedings and formalities were completed and arrest and recovery memo was prepared on the basis of which the present FIR has been lodged.

5. Learned counsel for the applicant submitted that the applicant is working as a District Coordinator (Mid-day Meal) in the office of the Basic Education Officer, Bijnor on contractual basis and his services are renewed from time to time since 2009, para 18 of the affidavit has been placed before the Court. It is submitted further while placing para 23 of the affidavit that the applicant is a simple employee

in the office and works on contractual basis and is not the authorized person for taking any official decision in any matter. Further, while placing para 41 of the affidavit it is argued with vehemence that the applicant is not a government employee and hence the provision of P.C. Act are not applicable upon him. Further, it is argued that since the applicant is a person working on contractual basis, he is not a public servant. It is submitted that looking to the post of the applicant, the work and post on which he is working, his implication in the present case is false. Learned counsel has further placed before the Court judgment of the Apex Court in the case of Prem Prakash Vs. Union of India : SLP (Crl.) No. 5416 of 2024 : 2024 INSC 637 : decided on 28.08.2024 and has submitted that the Apex Court in the said case has held that bail is a rule and jail is an exception and looking to the same, the applicant be granted bail. It is submitted that the applicant is in jail since 27.06.2024 and has already undergone a substantial period of time in jail and looking to the judgment of the Apex Court he be released on bail. It is submitted that the applicant has no criminal history as stated in para 43 of the affidavit.

6. Per contra, learned counsel for the original complainant vehemently opposed the prayer for bail and submitted that the applicant was arrested accepting bribe money which has been recovered. It is submitted that the trap proceedings are genuine and proceedings which have been recorded in which the applicant is shown to have been arrested with bribe money. It is further submitted that the applicant is a public servant and even a person who is in the service or pay of the government or remunerated by the government by fees or commission for the performance of any public duty is a public servant. It is submitted that it has been held that a person working on contractual also is a public servant. Learned counsel has placed before the Court judgment of a co-ordinate Bench of this Court in the case of Anil Kumar Singh Vs. State of U.P. : 2023 0 AHC (LKO) 57157 and the judgment of the Apex Court in the case of State of Gujarat Vs. Mansukhbhai Kanjibhai Shah : 2020 (20) SCC 360 to buttress the same. It is submitted that the present case is a case in which there was a demand of bribe and the same was accepted by the accused-applicant after which he was caught in trap proceedings. It is submitted that as such the bail application of the applicant be rejected.

7. Learned counsel for the State also opposed the prayer for bail and submitted that in the present case trap proceedings were laid in which the applicant was arrested accepting bribe. There is an allegation of his demanding bribe and also acceptance. It is submitted that there were two independent witnesses who are not connected in any manner with the present case and were nominated by the District Magistrate concerned before whom the trap was led and the applicant was arrested. It is submitted that the bail be rejected.

8. After having heard learned counsels for the parties and perusing the records, it is evident that the applicant is posted on a contractual basis in the office of Basic Education Officer, Bijnor. He is a public servant as per the definition of a public

servant in the Prevention of Corruption Act. The prosecution case is of a demand of bribe money to the applicant for the work of the original complainant, subsequently, there was an acceptance of bribe money and the applicant was arrested therein in a trap laid by the officers of Vigilance Department and Rs. 50,000/- was recovered as bribe money. Two independent witnesses were present at the time of trap proceedings. Huge amount of money has been recovered. The applicant was working in the office and was responsible for the issuance of NOC for which he had demanded bribe.

9. In so far as the argument regarding the judgment of the Apex Court reiterating that bail is a rule and jail is an exception is concerned, although the same has been reiterated by the Apex Court but the gravity of the offence cannot be lost sight of. In the present case, the applicant while holding post of a public servant demanded bribe for issuing NOC which was the work from his table and then accepting the bribe he was arrested on the spot and as such the matter stands on a different footing and goes to show that he was involved in a matter of corruption which needs to be tackled with a strong hand. I do not find it a fit case for bail.

10. Considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail.

11. The bail application is, accordingly, rejected."

4. Against the order dated 04.09.2024 rejecting the first bail application of the applicant, the applicant preferred a Special Leave to Appeal (Criminal) No. 14932 of 2024 (Rashu Kumar Vs. State of Uttar Pradesh) before the Apex Court which was dismissed as withdrawn. However, it was made clear that the said dismissal will not prejudice the rights of the accused to approach the High Court. The order of the Apex Court dated 11.11.2024 reads as under:

"Heard learned counsel appearing for the petitioner.

When the matter is taken up for consideration, the learned counsel for the petitioner, on instructions, seeks permission to withdraw this petition with liberty to approach the High Court, in accordance with law.

Permission, as prayed for, is granted The Special Leave Petition is dismissed as withdrawn. However, we make it clear that the dismissal of this petition will not prejudice the rights of the petitioner to approach the High Court. We further make it clear that we have not made any observation(s) touching the merits of the matter.

Pending application(s), if any, shall stand disposed of."

5. Learned counsel for the applicant raised a solitary argument in the matter that the applicant has been in jail since 27.06.2024 and as such has undergone six months of incarceration in a matter

which involves his arrest and alleged acceptance a bribe of only Rs. 50,000/-. It is submitted that the investigation in the matter has concluded and charge sheet has been submitted which is annexure 13 to the affidavit in support of the bail application and is dated 22.08.2024. It is submitted that the applicant be thus granted bail.

6. Per contra, learned counsel for the State and learned counsel for the original complainant vehemently opposed the prayer for bail and submitted that the first bail of the applicant has been rejected by this Court on merits by a detailed order on 04.09.2024. It is submitted that the order rejecting first bail application of the applicant was subjected to challenge before the Apex Court but the said challenge was withdrawn and thus the order gets affirmed. It is further submitted that there is no fresh and new ground available to the applicant and as such except for the period of detention, no other ground has been argued which could be effectively replied for. It is submitted that the bail application be thus dismissed.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the first bail application of the applicant has been rejected by this Court by an order dated 04.09.2024 on merits. Charge sheet dated 22.08.2024 in the matter has been submitted prior to the rejection of the first bail application on which the court concerned had taken cognizance on 23.08.2024. The order rejecting the first bail application was subjected to challenge before the Apex Court but the same was got dismissed as withdrawn. Subsequently, the present second bail application has been filed. As of now, there is no change in circumstance, fresh and new ground which has been argued except for the fact that the applicant is in jail since last six months. The amount of money recovered is Rs. 50,000/- in trap proceedings which was laid by the officers of the Vigilance Department in which there were two independent witnesses. The recovery is of a huge amount. There is no fresh and new ground as of now to entertain the present bail application.

8. Considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail.

9. The bail application is, accordingly, rejected.

Order Date :- 2.1.2025 M. ARIF (Samit Gopal, J.)