

## **Najim vs State Of U.P. on 2 January, 2025**

**Author: Sanjay Kumar Pachori**

**Bench: Sanjay Kumar Pachori**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:368

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37301 of 2024

Applicant :- Najim

Opposite Party :- State of U.P.

Counsel for Applicant :- Amar Nath

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Pachori,J.

Supplementary affidavit filed today is taken on record.

Heard Sri Sushil Kumar Pandey, learned counsel for the applicant and Sri R.K. Singh, learned A.G.A. for the State and perused the material on record.

The present bail application has been filed on behalf of applicant Najim under Section 439 of the Code of Criminal Procedure, with a prayer to enlarge him on bail in Case Crime No. 223 of 2024 for offence punishable under Sections 2/3 of U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986, registered at Police Station- Kotwali Nagar, District- Muzaffarnagar, during pendency of the trial, after rejecting the bail application of the applicant by Additional Sessions Judge/Special Judge (Gangsters Act), Court No. 5, Muzaffarnagar vide order dated 16.09.2024.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. It is further submitted that the gang chart as

shown has not been prepared after complying the mandatory provision of rule 5(3)(c)(e) of U.P. Gangsters & Anti-Social Activities (Prevention) Rules, 2021. The gang chart has been signed on different dates, which clearly shows that gang chart has not been prepared as per rule.

It is further submitted that applicant has criminal history of 23 other cases including the cases of Gang-chart. It is further submitted that the applicant explained the criminal history of 23 other cases in paragraph 3 of the supplementary affidavit in tabular form in chronological order. It is further submitted that eight cases are related to U.P. Prevention of Cow Slaughter Act, which are related to the years 2012, 2015, 2016, 2018, 2023 and 2024. It is further submitted that in all cases, applicant is granted bail. It is further submitted that there is no pre-summoning evidence or inquiry was made against the applicant for property which is alleged to have been gained by the aforesaid criminal history.

It is further submitted that there is no pre-summoning evidence with regard to the fact that the applicant has run any gang or a gang leader as defined in the Act. It is next contended that applicant is neither a member of any gang nor a gang leader and he is not indulged in any anti-social activities as alleged by the prosecution in the first information report. It is further submitted that there is no other evidence with regard to tampering the evidence in the pending cases.

It is further submitted that the provisions of the Act have been ill-used by the Police in order to perpetuate the detention of the applicant in jail anyhow even though the offence under the aforesaid Act is not made out. It is also submitted that the applicant is not a gangster and has never acted or conducted himself as such. Learned counsel for the applicant has also tried to demonstrate that the alleged previous offences which are said to have been committed by the applicant can at the most be said to be stray incident of breach of law having no nexus with the definition of a gangster as has been provided in the Act.

Learned counsel for the applicant further urged that the F.I.R. in question has been lodged without containing the facts that the applicant is a member of gang as provided in the Act. It is further submitted that other co-accused Tanveer, Haneef, Kaleem, Ikram, Rashid, Shahzad, Gayyur, Nawab have already been granted bail by this court as well as co-ordinate Benches of this Court in Criminal Misc. Bail Application Nos. 20941 of 2024, 24040 of 2024, 21129 of 2024, 21470 of 2024, 20508 of 2024, 21212 of 2024, 20871 of 2024 and 23278 of 2024 vide order dated 29.05.2024, 26.06.2024, 29.5.2024, 31.05.2024, 31.5.2024, 30.05.2024, 13.06.2024 and 16.07.2024 respectively.

It is further submitted that other co-accused Manawwar Alias Bholu, having similar role has already been granted bail by this court in Criminal Misc. Bail Application Nos. 22602 of 2024, vide order dated 06.09.2024. The applicant is languishing in jail since 12.05.2024.

Learned counsel for the applicant has relied upon the judgments of Apex Court in Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu and another, (2012) 9 SCC 446 and Prabhakar Tiwari Vs. State of U.P. and another, (2020) 11 SCC 648 wherein the Apex Court has observed that pendency of other criminal cases against the accused may itself cannot be a basis for refusal of bail.

Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence. In case the applicant is released on bail, he will again indulge in similar activities and will misuse the liberty of bail.

It is well settled position of law that bail is the rule and committal to jail is an exception and refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution [Vide State of Rajasthan Vs. Balchand @ Baliay (1977) 4 SCC 308 Gudikanti Narasimhulu And Ors Vs. Public Prosecutor, High Court Of Andhra Pradesh, AIR 1978 SC 429 and Satender Kumar Antil Vs. Central Bureau of Investigation & Another, (2021) 10 SCC 773.] No material or circumstances has been brought to the notice of this Court with regard to tampering of evidence or intimidating of witnesses in previous criminal history.

Keeping in mind, larger mandate of Article 21 of the constitution of India, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused-applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and other circumstances and after considering the provision of Section 19(4) of the U.P. Gangsters Act, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail. Hence, present bail application is allowed.

Let applicant Nazim released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

- (i) The applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence.
- (ii) The applicant shall not pressurize/intimidate the prosecution witnesses.
- (iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (a) opening of the case, (b) framing of charge and (c) recording of statement under Section 313 of Cr.P.C.
- (iv) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.
- (v) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(vi) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

The trial court may make all possible efforts/endeavor and try to conclude the trial expeditiously in accordance with law after the release of the applicant, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the applicant along-with a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 2.1.2025 Akram