

Azhar And Another vs State Of U.P. Thru. Secy. Home Lko. on 5 March, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:13592

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13161 of 2024

Applicant :- Azhar And Another

Opposite Party :- State Of U.P. Thru. Secy. Home Lko.

Counsel for Applicant :- Anoop Srivastava,Atul Krishna,Praveen Kumar Yadav,Rishabh Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

Rejoinder Affidavit filed today on behalf of the applicants is taken on record.

Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

The instant bail application has been filed on behalf of the applicants with the prayer to release them on bail during the trial in Case Crime No. 274 of 2024, under sections 316(2), 318(4), 352 and 111 of the Bhartiya Nyaya Sanhita, 2023 and sections 3/5/21/23 of the BUDS Act,2019, Police Station-Bangarmau, District -Unnao.

Contention of learned counsel for the applicants is that the applicants are innocent and have falsely been implicated in the instant matter due to ulterior motive. He added that the role attributed to the applicants are that they have allured the informant to deposit some amount in the account of the co-accused, namely,Arbaz and it is not the case of the prosecution that any amount has ever been

given by the informant or any victim to the present applicants either in case or in their accounts. He submits that the applicants are no way beneficiary and as such, the ingredients of the offences under sections 316(2), 318(4), 352 & 111 of the Bhartiya Nyaya Sanhita, 2023, do not attract in the present matter. He next submits that the charge sheet has been filed and as such, there is no possibility that the applicants would tamper the evidences or would threaten the witnesses. He also submits that the role of the present applicants are distinguishable from the role of co-accused, Arbaz, in whose account, the alleged misappropriated amount is deposited and added that the applicants are law abiding citizens and they are languishing in jail since 16-08-2024 and they undertake that in case, they are granted bail, they will not misuse the liberty of the same and would cooperate in the trial proceedings.

Per contra, learned AGA appearing for the State has opposed the contentions aforesaid and submits that there are serious allegations against the applicants and as such, they are not entitled for any relief.

Having heard learned counsels for the parties and after perusal of material placed on record, it transpires that the applicants are languishing in jail since 16-08-2024; the applicants are no way beneficiary; the charge sheet has been filed and as such, there is no possibility that the applicants would tamper the evidences or would threaten the witnesses; no amount has ever been incriminated in the accounts of the applicants and the role of the present applicants are distinguishable from the role of co-accused, Arbaz, in whose account, the alleged misappropriated amount is deposited coupled with the fact that the applicants have undertaken that if they are granted bail, they will not misuse the liberty of the same and would cooperate in the trial proceedings.

Considering the submissions of learned counsel of both sides, nature of accusation and severity of punishment in case of conviction, nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformatory theory of punishment and considering larger mandate of the Article 21 of the Constitution of India and, without expressing any view on the merits of the case, I find it to be a fit case of bail.

Let the applicants-Azhar and Amir Khan @ Amir, involved in the aforementioned crime be released on bail, on their furnishing personal bonds and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

- (1) The applicants shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, or otherwise during the investigation or trial;
- (2) The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. They shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code;

(3) The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C.; and (4) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, the trial court shall initiate proceedings against them, in accordance with law under Section 174-A of the Indian Penal Code.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison. It is clarified that the observations made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the merits of the case.

Order Date :- 5.3.2025 AKS