

Praveen vs State Of U.P. on 14 May, 2024

Author: Saurabh Shyam Shamshery

Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Neutral Citation No. - 2024:AHC:86313

Reserved on 10.05.2024

Delivered on 14.05.2024

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13444 of 2023

Applicant :- Praveen

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajrshi Gupta,Rizwan Ahamad,Sr. Advocate

Counsel for Opposite Party :- G.A.,Harshit Gupta,Ramanand Gupta

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri I.P.S. Tomar and Sri Rizwan Ahamad, learned counsels for applicant, Sri Roshan Kumar Singh, learned AGA for State and Sri Sagir Ahmad, learned Senior Advocate assisted by Sri Harshit Gupta, learned counsel for Informant.

2. Applicant-Praveen has approached this Court by way of filing present bail application seeking enlargement on bail in Case Crime No. 543 of 2021 (Session Trial No. 1197 of 2022), under Sections

302, 506, 120B, 34, 201, 473 IPC, Police Station Civil Lines, District Aligarh.

3. This bail application was filed on 01.03.2023 and was taken up earlier for hearing on eight dates, however, it was mainly adjourned on request of counsel for applicant or due to his absence or for exchange of pleadings. Details of order passed on earlier dates are reproduced hereinafter:

Date Order 01.06.2023

1. Counter affidavit, if any, be filed by the State counsel on or before the date fixed.
2. List this case on 12.07.2023 as fresh.

12.07.2023 Counter affidavit filed by learned counsel for the informant is taken on record.

Learned counsel for the applicant prays for and is granted one week's time to file rejoinder affidavit.

Put up this case on 20.7.2023 as a fresh case.

20.07.2023 As prayed put up this case on 1.8.2023 as a fresh case.

08.08.2023 As prayed, list this case on 28.8.2023.

20.09.2023

1. As prayed, list after two months.

19.10.2023

1. Counsel for the applicant prays for adjournment.
2. Counsel for the informant informs that trial is on the verge of conclusion.
3. List this case peremptorily on 28.10.2023.

03.11.2023 Learned counsel for the informant informs that trial is on the verge of conclusion.

Learned counsel for the applicant is seeking regular adjournment in this case.

List this case after three months.

08.02.2024

19.03.2024

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4. Present case is arising out of an occurrence where a businessman was shot dead by multiple close range firearm shots (five entry and three exit firearm wounds) in his car by contract killers, who were following deceased by another vehicle, at about 08.45 PM on 27.12.2021 at a busy place in the heart of Aligarh City. A thorough investigation was conducted and a large conspiracy was unearthed. It was revealed that main conspirator was co-accused, Ankush Agrawal, whose bail application was rejected by a Coordinate Bench of this Court on 09.01.2023 (Neutral Citation No. 2023:AHC:5455). For reference reasons assigned to reject bail application are mentioned hereinafter:

"After hearing the rival contention, this court finds that main motive for commission of alleged offence has been attributed to the applicant by the witnesses. The settlement an amount of Rs. 90 lacs was disliked by the applicant since the deceased was pursuing the settlement and wanted that Deepti Gupta should be paid remaining amount of Rs. 45 lacs as permanent alimony by the applicant. The deceased was got murdered by the applicant by hiring shooters and hatching conspiracy with his friend and co-accused stated above."

5. During investigation, on basis of CCTV footage and eye witness account, sketches of two assailants and driver of vehicle were drawn. During investigation, gradually layers of conspiracy were peeled out, truth revealed and involvement of as many as 13 accused came into light. Trial is proceeding and it has reached upto statement of last prosecution witness. Submission was made that an application under Section 311 Cr.P.C. is being filed on behalf of applicant, but it was not supported by any document. Otherwise also, it would be a fatal argument as it would amount to delay trial on part of accused side only.

6. Learned counsel for applicant has mainly urged that there was no eye witness who could identify real culprits. Applicant's name was disclosed in confessional statement of co-accused (Sahil Yadav), who has already been released on bail. There is no direct evidence of conspiracy and role assigned to applicant being contract killer alongwith other co-accused (Jitendra) is not supported by cogent evidence. Driver of car, who was also alleged to be a contract killer, has been released on bail and other co-accused, alleged to be part of conspiracy, have also been granted bail.

7. Per contra, learned Senior Advocate appearing for Informant submitted that applicant being contract killer, has no fear of law and order. He has long criminal history of atleast eighteen cases involving offences of attempt to murder, murder, murder during robbery, Arms Act etc. Applicant is menace to society and if bail is granted, he not only being remain a flight risk but there is likelihood to repeat grievous offences. Ballistic report also proved that weapon recovered on pointing out of applicant, was used in occurrence. List of criminal cases are as follows:

"i. Case Crime No. 508 of 2013 under Sections 147, 148, 149, 302, 302, 307 IPC and 7 CLA Act P.S.- Civil Lines District Aligarh.

- ii. Case Crime No. 606 of 2013 under Section 25 Arms Act, Civil Lines District Aligarh.
- iii. Case Crime No. 543 of 2021 under Sections 302, 120B, 506, 34, 201, 473 IPC Civil Lines District Aligarh.
- iv. Case Crime No. 368 of 2019 under Sections 147, 148, 149, 307, 323, 504 IPC P.S. Khair District Aligarh.
- v. Case Crime No. 89 of 2020 under Section 2/3 Gangster Act P.S. Banna Devi District Aligarh.
- vi. Case Crime No. 147 of 2019 under Sections 147, 148, 149, 307 IPC P.S. Banna Devi District Aligarh.
- vii. Case Crime No. 148 of 2019 under Section 25/27 Arms Act P.S. Banna Devi District Aligarh.
- viii. Case crime no. 155 of 2022 under Section 2/3 Gangster Act, P.S. Civil Line, Aligarh.
- ix. Case Crime No. 198 of 2014 under Section 392 IPC P.S. Tappal District Aligarh.
- x. Case Crime No. 1402 of 2018 under Sections 147, 148, 149, 307 IPC P.S. Kotwali Sadabad District-Hathras.
- xi. Case Crime No. 234 of 2015 under Sections 302, 120B, 34 IPC P.S. Chandpa District- Hathras.
- xii. Case Crime No. 17 of 2016 under Section 2/3 Gangster Act P.S. Chandpa District-Hathras.
- xiii. Case Crime No. 400 of 2017 under Sections 392, 34 IPC & 25 Arms Act P.S. Badshahpur District- Gurugram.
- xiv. Case Crime No. 58 of 2018 under Sections 392, 394, 395, 397, 365, 34 IPC & 25/27 Arms Act P.S. Dwarika District- New Delhi.
- xv. Case Crime No. 182 of 2018 under Sections 147, 148, 149, 307, 302 P.S. Shikarpur District- Bulandshehar.
- xvi. Case Crime No. 76 of 2022 under Sections 25/27/3 Arms Act P.S. Tappal District- Aligarh.

xvii. Case Crime No. 01 of 2017 under Section 25 Arms Act P.S. Special Cell Lodhi Colony District- New Delhi.

xviii. Case Crime No. 36 of 2022 under Section 3/25 Arms Act, P.S. Bharatpur, Rajasthan."

8. I have considered the above mentioned rival submissions in referred factual and legal backgrounds and in view of established principle of jurisprudence of bail i.e 'bail is rule and jail is exception' as well as relevant factors for consideration of a bail application such as (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; (viii) danger, of course of justice being thwarted by grant of bail etc, and that an order to grant or not to grant bail must assigned reasons (see Deepak Yadav vs State of U.P. (2022) 8 SCC 559, Manoj Kumar Khokar vs State of Rajasthan and Anr (2022) 3 SCC 501, The State of Jharkhand vs Dhananjay Gupta @ Dhananjay Prasad Gupta: Order dated 7.11.2023 in SLP(Crl) No.10810/2023, Shiv Kumar Vs The State of U.P. and Ors : Order dated 12.9.2023 in Criminal Appeal No.2782 of 2023; Ramayan Singh vs. The State of U.P. and another, 2024 SCC OnLine SC 563), I am of considered opinion that present is not a fit case to grant bail to applicant mainly on following grounds:-

(i) The orders whereby co-accused were granted bail were not accompanied with reasons as warranted by Supreme Court in Manoj Kumar Khokhar (supra) and Brijmani Devi vs. Pappu Kumar (2022) 4 SCC 497. All co-accused were mainly alleged to be part of larger conspiracy whereas allegations against applicant are of execution of plan to cause death by firing, therefore, claim of parity is rejected.

(ii) In the present case a thorough investigation was conducted that not only various evidence such as, photo sketch, CCTV footage, statement of various witnesses, call details etc. were collected but active involvement of applicant being contract shooter was also unearthed and at this stage there is no material to doubt credibility of evidence collected during investigation.

(iii) Trial is proceeding and applicant has not placed statement of witnesses recorded during trial and is relying only upon material collected during investigation. It appears that they want that this Court may not peruse even prima facie nature of evidence before Trial Court. This factor also goes against applicant. Complainant has filed some statement but counsel for applicant has not referred it. In this regard Court takes note submission of learned Senior Advocate for Informant that testimony of witnesses are prima facie against applicant.

(iv) The argument with regard to lack of evidence for hatching conspiracy is also liable to be rejected as not only nature of evidence before Trial Court is not brought

before this Court but question likely to be put under Section 313 Cr.P.C. are still not ascertained. In this regard paras 35 and 36 of Sanjeev Vs. State of Kerala, 2023 INSC 998, being relevant, are mentioned hereinafter:

"35. After consideration of these depositions, we must decide whether the evidence on record is sufficient to establish a conspiracy under Section 120B, IPC. The ingredients to constitute a criminal conspiracy were summarised by this Court in State through Superintendent of Police v. Nalini & Ors. (1999)5 SCC 253 (3-Judge Bench). They are as follows:

i. Conspiracy is when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means.

ii. The offence of criminal conspiracy is an exception to the general law, where intent alone does not constitute crime. It is the intention to commit a crime and join hands with persons having the same intention.

iii. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

iv. Where in pursuance of the agreement, the conspirators commit offenses individually or adopt illegal means to do a legal act that has a nexus to the object of the conspiracy, all of them will be liable for such offenses even if some of them have not actively participated in the commission of those offenses.

36. These principles were followed in Yakub Abdul Razak Memon v. State of Maharashtra, (2013)13 SCC 1 (2-Judge Bench), wherein this Court reiterated that to establish conspiracy it is necessary to establish an agreement between the parties. Further, the offence of criminal conspiracy is of joint responsibility, all conspirators are liable for the acts of each of the crimes which have been committed as a result of the conspiracy. [See also: Arvind Singh v. State of Maharashtra, (2021)11 SCC 1 (3-Judge Bench); Mohd. Naushad (supra)]"

(v) The Court also takes note of long criminal history of grievous offences of applicant and submission that he is a flight risk as well as likelihood of repeating offence is also very high.

(vi) The Court also takes note of reasons assigned while rejecting bail application of co-accused, Ankush Agrawal.

(vii) It has not been denied that prosecution witnesses have substantially supported prosecution case and that they have been tested with lengthy cross-examination.

9. The bail application is accordingly rejected.

10. Trial Court concerned is directed to conclude trial expeditiously.

11. Registrar (Compliance) to take steps.

12. A practice to engage a new Advocate by an applicant through his pairakar on date of hearing or few days back, only with an object to take an adjournment, specifically in bail applications, which has already been adjourned repeatedly on earlier dates on request of counsel for applicant, is liable to be discouraged. It is duty of an Advocate to expedite hearing of a bail application and not to prolong it.

Order Date :- 14.05.2024 AK