

Waseem Alias Raj Alias Nepali vs State Of U.P. on 5 May, 2025

Author: Raj Beer Singh

Bench: Raj Beer Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:71708

Court No. - 71

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43638 of 2024

Applicant :- Waseem Alias Raj Alias Nepali

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Vashisth,Vidit Narayan Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Supplementary affidavit filed on behalf of the applicant today in Court is taken on record.
2. Heard learned counsel for the applicant-accused, learned A.G.A. for the State and perused the record.
3. The present second bail application has been filed by the applicant-accused in Case Crime No.711 of 2018, under Sections 396, 412 IPC, P.S.- Murad Nagar, District- Ghaziabad with the prayer to enlarge the applicant-accused on bail.
4. The first bail application of applicant was rejected by this Court vide order dated 16.01.2024, which is reproduced as under :-

"1. Both the applications have been preferred in the same case and crime number and thus, both the applications are being decided by a common order.

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

3. These applications have been filed by the applicants-accused Waseem @ Raj @ Nepali, Imran Hasmi, Firoj and Faijan involved in Case Crime No.711 of 2018, under Sections 396, 412 IPC, P.S. Murad Nagar, District Ghaziabad with the prayer to enlarge them on bail.

4. It has been argued by learned counsel for the applicants-accused that applicants-accused are innocent and they have been falsely implicated in this case. The first information report was lodged on 07.06.2018, alleging that on the night of 6/7.06.2018 while injured Narendra along with his wife Maya Devi was sleeping at his house, some persons trespassed into his house and they have assaulted them and committed robbery. Later on, Maya Devi has succumbed to injuries. Learned counsel submitted that applicant is not named in first information report. After four days of the incident, statement of alleged witness Shiv Kumar was recorded, wherein, he has stated that on the previous day to the incident, some persons have come at the house of deceased for begging and they have disclosed their names as Waseem and Firoj and they have committed the incident in the night. It was stated that the story developed by witness Shiv Kumar is quite unnatural and improbable. Later on, false recovery of some jewellery, mobile phone and documents was shown at the instance of applicants and co-accused persons but there is no independent witness of alleged recovery. Further, no test identification parade of the case property has been conducted. Referring to the facts of the matter, it was submitted that there is no credible evidence against the applicants. The criminal history of applicant Wasim has duly been explained and that after arrest in this case he was shown involved in several cases. Lastly, it was submitted that applicants-accused are languishing in jail since 23.06.2018, and that in case the applicants-accused are released on bail, they will not misuse the liberty of bail and cooperate in the trial.

5. Learned A.G.A. has opposed the prayer for bail and argued that the incident is quite heinous in nature, wherein the the applicants have trespassed into the house of deceased and committed murder of deceased Maya Devi and caused the injuries to her husband Narendra and committed robbery. It was pointed out that a number of articles, including jewellery, pan card, bank pass book, mobile phone and some other articles, robbed from the house of deceased, were recovered from the applicants. The trial is at advanced stage.

6. Considering the submissions of learned counsel for the parties, nature of accusations, stage of trial, gravity of offence and all attending facts and circumstances of the case, both the bail applications of applicants-accused Waseem @ Raj @ Nepali,

Imran Hasmi, Firoj and Faijan are hereby rejected.

7. However, keeping in view of the period of incarceration of applicants-accused, the Trial Court is directed to expedite the trial and to decide the same preferably within a period of nine months from the date of receipt of a copy of this order, if there is no other legal impediment."

5. It is submitted by learned counsel for the applicant that applicant-accused is innocent and he has been falsely implicated in this case. The first information report was lodged on 07.06.2018, alleging that on the night of 6/7.06.2018 while injured Narendra along with his wife- Maya Devi was sleeping at his house, some persons trespassed into his house and they have assaulted them and committed robbery. Later on, Maya Devi has succumbed to injuries. Learned counsel submitted that applicant is not named in first information report. After four days of the incident, statement of alleged witness - Shiv Kumar was recorded, wherein, he has stated that on the previous day of the incident, some persons have come at the house of deceased for begging and they have disclosed their names as Waseem and Firoj and they have committed the incident in the night. It is further submitted by learned counsel for the applicant that first bail application of applicant was rejected by this Court vide order dated 16.01.2024 and that statement of above-referred witness- Shiv Kumar has already been recorded before the trial court. In his statement, he has not named the applicant and in his cross-examination he has stated that he has no knowledge about this case. Recovery of jewellery was shown at joint pointing out of applicant and co-accused persons and there is no independent witness of the same. Before this case, applicant has no criminal history however, after this case he was falsely implicated in several cases of theft and robbery etc. While rejecting the first bail application of applicant, the trial court was directed to expedite the trial and to decide the same preferably within a period of nine months but trial has not been concluded so far, whereas applicant is in judicial custody since 23.06.2018 and he has already undergone detention of about six years and ten months. Criminal history has duly been explained. It was further pointed out that since last two years, no witness has been examined before the trial court so far and in view of the aforesaid facts the trial of the case would take sufficient long time. It was stated that in case the applicant is granted bail, he shall not misuse the liberty of bail and will co-operate during the trial.

6. Learned A.G.A. has opposed the prayer for bail and submitted that the case relates to robbery and murder and first bail application of applicant has already been rejected on merits. It was further submitted that applicant has long criminal history of about 13 cases but it could not be disputed that before the case in question, applicant has no previous criminal history.

7. Considering the submissions of learned counsel for the parties and all attending facts, particularly period of detention and stage of trial, without expressing any opinion on the merits, a case for bail is made out. Hence, the bail application is hereby allowed.

8. Let the applicant-accused - Waseem Alias Raj Alias Nepali, involved in aforesaid crime be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:

- (i) The applicant-accused shall not tamper with the evidence during the trial.
- (ii) The applicant-accused shall not pressurize/ intimidate the prosecution witness.
- (iii) The applicant-accused shall appear before the trial court on the date fixed, unless personal presence is exempted.
- (iv) The applicant-accused shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- (v) The applicant-accused 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 them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

9. In case of breach of any of the above condition, the Court concerned shall be at liberty to cancel bail of applicant-accused in accordance with law.

Order Date :- 5.5.2025 Rama Kant