

## Mohammad Ubaid vs State Of U.P. on 2 August, 2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2023:AHC:153946

A.F.R

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30337 of 2023

Applicant :- Mohammad Ubaid

Opposite Party :- State of U.P.

Counsel for Applicant :- Imran Ullah, Mohammad Daud

Counsel for Opposite Party :- G.A., Swati Agrawal Srivastava

Hon'ble Vikram D. Chauhan, J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.
2. Heard learned counsel for the applicant, Mrs. Swati Agrawal Srivastava, learned counsel for the informant, learned A.G.A. for the State and perused the record.
3. It is submitted by learned counsel for the applicant that the First Information Report was lodged on 7.4.2023 in respect of an incident dated 6.4.2023. As per FIR, it is alleged that applicant has threatened the informant for payment of extortion of Rs.2 crore and has threatened for life. He submits that the FIR has been lodged under Sections 147, 148, 323, 504, 506 and 386 IPC and subsequently investigation has been held and chargesheet has been submitted under Sections 147, 148, 323, 504, 506 and 386 IPC. He submits that in the present case, there is no delivery of amount and even if the allegation as per FIR is taken to be correct, no case beyond section 385 IPC is made

out. He further submits that for punishment under Section 386 IPC, it has to be shown by prosecution that there was delivery to any person any property or valuable security or anything signed or sealed, which may be converted into a valuable security. He further submits that there is a long drawn previous enmity between the parties as both the parties have contested the election for Pradhani and both belong to same village. Learned counsel for the applicant further submits that applicant has previous history of 10 cases. However his submission is based on the fact that even if the allegation of FIR is taken to be true then only under Section 385 IPC would be made out which is bailable offence.

4. Learned counsel for the applicant further submits that on previous occasion, bail was granted, however till date no bail cancellation has been moved by the informant as per the knowledge of applicant for cancellation of bail in previous cases. He submits that once it is shown that offence is bailable then applicant cannot be permitted to be remain in jail only on the ground of previous criminal history. He further submits that long drawn criminal history against the applicant is only on account of political enmity. He relied upon para 21 of the affidavit to submit that informant is the witness of the sale deed of the land being transferred in favour of the son of police personnel, which itself is indicative of the fact that the manner in which police is being handled by the informant as friends. It is further submitted that arrest of co-accused persons have already been stayed by this Court in Criminal Misc. Writ Petition No.7242 of 2023, copy of which has been filed at Annexure No.10. Applicant is languishing in jail since 9.4.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

5. Learned counsel for the informant submits that applicant has criminal history of 10 cases. She submits that on previous occasion, FIR was lodged by the informant against applicant where on account of Pradhani election dispute, applicant is harassing the informant and is demanding a sum of Rs.2 crores. She has relied upon the judgment of the Apex Court in Harjit Singh Vs. Inderpreet Singh @ Inder and another passed in Criminal Appeal No.883 of 2021 arising from S.L.P. (Criminal) No.3739 of 2021, to submit that once there is a history of 10 cases, applicant is not entitled to be released on bail.

6. It is submitted by learned counsel for the informant that when the first FIR was lodged against applicant by the informant and bail granted, the applicant had again committed crime against informant as a result of same, an application was moved by the informant before the police authorities on the basis of which proceedings under Sections 107/116 Cr.P.C. was initiated. Learned counsel for the informant submits that another FIR being Case Crime No.44 of 2023 was lodged in respect of assault made by the applicant on informant, in which also applicant was enlarged on bail. The submission of learned counsel for the informant is that in case the applicant is released on bail, he might again commit crime.

7. Learned A.G.A. for the State opposed the prayer for bail and submits that a demand of Rs.2 crore for extortion has been made from Village Pradhan, who is a elected representative. He submits that applicant has been charge sheeted under Sections 147, 148, 323, 504, 506 and 386 IPC and has previous criminal history.

8. Learned AGA for the State has pointed out the criminal antecedents of the applicant. No material or circumstance has been brought to the notice of this Court with regard to tampering of evidence or intimidating of witness in previous criminal cases. In Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446, the Apex Court in para 30 has observed:-

"We may hasten to add that when we state that the accused is a history-sheeter we may not be understood to have said that a history-sheeter is never entitled to bail. But, it is a significant factor to be taken note of regard being had to the nature of crime in respect of which he has been booked."

9. In the case of Prabhakar Tewari Vs. State of U.P. and another, 2020 (11) SCC 648, the Hon'ble Supreme Court has observed that pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail.

10. In so far as criminal antecedents of the applicant is concerned, it is not the case of the State that applicant might tamper with or otherwise adversely influence the investigation, or that he might intimidate witnesses before or during the trial. The State has also not placed any material that applicant in past attempted to evade the process of law. If the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history, no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused, hence, the Court does not feel it proper to deny bail to the applicant just on the ground that he had criminal antecedent.

11. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51. Learned AGA has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

12. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or intimidating witnesses and the like have been shown by learned AGA for the State.

13. Learned AGA for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

14. On a pointed query being made to learned counsel for the informant as well as learned AGA as to whether offence under Sections 385 IPC is bailable offence, learned counsel for the informant as well as learned AGA do not dispute the fact that Sections 385 IPC is bailable in nature.

15. It is to be seen that in the present case, allegation in the FIR are with regard to demand of money by way of extortion for sum of Rs.2 crore from a Village Pradhan. The applicant also contested the election of Village Pradhan against informant and after election were over, present FIR has been

lodged for demand of Rs.2 crore, which is alleged by the prosecution to be extortion. The extortion has been defined in Section 383 IPC, which is reproduced hereinbelow:

"383. Extortion.--Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion". "

16. Under Section 383 IPC, one of the essential ingredient is that to deliver to any person any property or valuable security or anything signed or sealed, which may be converted into valuable security.

17. The Apex Court in Isaac Isanga Musumba and others Vs. State of Maharashtra, 2014 (15) SCC 357 has held that "

"3. We have read the FIR which has been annexed to the writ petition as Annexure P-7 and we find therefrom that the complainants have alleged that the accused persons have shown copies of international warrants issued against the complainants by the Ugandan Court and letters written by Uganda Ministry of Justice & Constitutional Affairs and the accused have threatened to extort 20 million dollars (equivalent to Rs.110 crores). In the complaint, there is no mention whatsoever that pursuant to the demands made by the accused, any amount was delivered to the accused by the complainants. If that be so, we fail to see as to how an offence of extortion as defined in Section 383 IPC is made out. Section 383 IPC states that :

"383. Extortion.- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits 'extortion'. "

Hence, unless property is delivered to the accused person pursuant to the threat, no offence of extortion is made out and an FIR for the offence under Section 384 could not have been registered by the police."

18. On a further query being made to learned counsel for the informant as well as learned AGA as to whether there was any delivery of property or the amount, both the counsel fairly submit that there was no delivery of any amount, the only allegations are with regard to demand of Rs.2 crore.

19. It is further to be noted that for offence under Section 386 IPC, the allegation should come within four corners of Section 383 IPC and as such, there should be a delivery of amount demanded. In the present case, there is only demand, no delivery of amount.

20. It is further to be seen that Section 385 IPC pertains to case where there is an attempt for extortion. Section 385 IPC is quoted hereinbelow:

"385. Putting person in fear of injury in order to commit extortion.--Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

21. Perusal of aforesaid section would demonstrate that where any person in order to extort puts any person in fear or attempts to put any person fear, of any injury then he is punishable for such offence for a maximum period of two years. The aforesaid offence under Section 385 IPC is bailable in nature as has been agreed between the parties.

22. Once the legislature itself has provided the offence to be bailable in nature then the person cannot be put in jail as the right under Article 21 of the Constitution of India would be affected. The prosecution is required to show that offence under Section 386 IPC is made out in the present case. The prosecution has failed to demonstrate from the record as to how offence under Section 386 IPC is made out, once there is no delivery of amount.

23. Considering the fact that the allegation against the applicant does not come within the four corners of Section 386 IPC and would at best, triable by Section 385 IPC, which is bailable offence. The right of applicant for bail cannot be curtail in view of Article 21 of the Constitution of India.

24. Learned counsel for the informant as well as learned AGA fairly concede both the aspect of the matter that there is no delivery of amount demanded and as such, Section 386 IPC may not be applicable in the facts and circumstances of the case. Once the offence at the best is under Sections 385 IPC, which is bailable in nature, the right of the applicant being enlarged on bail cannot be curtailed.

25. In the present case, applicant is also implicated under Section 323 IPC. There is no injury report of any injured person. The same would imply that no dangerous weapons were used by the applicant as per prosecution case. The sentence provided under Section 323 IPC is extendable upto one year. The applicant has also been implicated under Sections 504 and 506 IPC with the allegation that applicant has threatened and demanded money otherwise, informant would not be fit for the office of Pradhani and threatened for life. Maximum sentence provided in the aforesaid sections is two years and in case of death or grievous hurt, the same is seven years.

26. The criminal history of applicant has been disclosed from paragraph nos. 30 to 44 of the affidavit filed in support of bail application. In the aforesaid cases, applicant has already been enlarged on bail. There is political rivalry between applicant and the informant. It cannot be denied as a matter of fact that once there is a political rivalry, false implication of applicant can be raised by the applicant more specifically in view of paragraph no. 21 of the affidavit filed in support bail application. The applicant has alleged that informant is in touch and in connection with local police has earlier also implicated the applicant in false FIR. The details of which are provided in paragraph no.22 of the affidavit where applicant has already been enlarged on bail.

27. The manner in which the offence under Section 386 IPC has been slapped against applicant even though the ingredients of the same are not available in the FIR or otherwise, learned AGA as well as learned counsel for informant has failed to show as to how offence under Section 386 IPC is made out against applicant, demonstrate the overreaching of the police authorities by slapping cases of non-bailable in nature under Section 386 IPC when only Section 385 IPC can at the best be found against applicant, which is bailable offence.

28. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

29. Let the applicant Mohammad Ubaid involved in Case Crime No. 066 of 2023, under Sections 147, 148, 323, 504, 506, 386 IPC, Police Station Puramufti, District Prayagraj 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 the following conditions:-

- i. The applicant will not tamper with the evidence during the trial.
- ii. The applicant will not pressurize/intimidate the prosecution witness.
- iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.
- iv. The applicant 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 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.
- vi. The applicant shall not leave India without the previous permission of the Court.
- vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

30. It is also provided that applicant shall not come within the periphery of 100 meter from the house of informant and shall not disturb the peace and tranquillity of the informant and in case any disturbance take place, recourse of law shall be taken by the parties.

31. SHO concerned shall maintain peace and tranquillity between the parties.

32. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 2.8.2023 D. Tamang