

Kamlesh Pathak vs State Of U.P. on 19 March, 2024

Author: Sanjay Kumar Singh

Bench: Sanjay Kumar Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:49634

AFR

Reserved on 13.3.2024

Delivered on 19.3.2024

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44594 of 2023

Applicant :- Kamlesh Pathak

Opposite Party :- State of U.P.

Counsel for Applicant :- Raghav Arora

Counsel for Opposite Party :- G.A.,Anurag Shukla,Dharmendra Shukla,Saurabh Pathak

Hon'ble Sanjay Kumar Singh,J.

1-Heard Mr. Saghir Ahmad, learned Senior Advocate assisted by Mr. Raghav Arora, learned counsel for the applicant, Mr. Arbind Kumar, Mr. Deepak Mishra and Mr. Rabindra Kumar Singh, learned Additional Government Advocates appearing for the State of U.P. as well as Mr. Anil Tiwari, learned Senior Counsel assisted by Mr. Anurag Shukla, learned counsel appearing on behalf of complainant of [double murder case (crime No. 189 of 2020) filed against the applicant and his associates].
2-Brief facts of the case which are required to be stated are that a first information report under Section 3(1) of U.P. Gangster and Anti-Social Activities (Prevention) Act was lodged on 11.07.2020 against the applicant, who is Ex-MLC and his other ten associates at Police Station Auraiya, District-Auraiya on the basis of two cases being Case Crime No. 189 of 2020, under Sections 147, 148, 149, 302, 307, 506 I.P.C. and Section 7 of Criminal Law Amendment Act and Case Crime No. 196 of 2020 under Sections 147, 148, 149, 353, 307 I.P.C. and Section 7 of Criminal Law

(Amendment) Act registered against him and others on 11.06.2020 at Police Station Auraiya, District Auraiya. In the first information report of this case, it is alleged inter alia, that gang leader Kamlesh Pathak (applicant) along with his gang members carry out criminal incidents like extortion, illegal encroachment of precious government land, assault, firing etc. to maintain their dominance and terror in the society for their economic and worldly benefits. Many criminal cases are already registered against the applicant and his associates, which they got compromised due to their fear and influence. No one comes to testify against them due to their fear. They misused their position while being in government and got their cases closed. On 15.03.2020, an advocate Manjul Chaube and his sister Sudha Chaube was brutally murdered by firing in brought day light in order to grab the valuable land of "Panchmukhi Hanuman Temple" situated in Arya Nagar, Auraiya. Due to which, their fear, dread and terror has become so widespread among the public that no one from the public dares to speak and testify against them, therefore it is not in public interest for them to remain free. Hence it is necessary to take action against them under U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986. 2.2-After investigation police Report (charge-sheet) under Section 173 (2) Cr.P.C. has been submitted against the applicant and other accused persons on 11.06.2020 and they are facing trial. 2.3-The first bail application of the applicant was rejected by detail order of the coordinate Bench of this Court dated 23.02.2023 in Criminal Misc. Bail Application No. 21738 of 2022. 2.4-The above order dated 23.02.2023 was challenged by the applicant before Hon'ble the Apex Court by means of Petition(s) for Special Leave to Appeal (Crl.) No. 3438 of 2023, which was dismissed by the Hon'ble Supreme Court vide order dated 08.05.2023, leaving it open to the petitioner to renew his request of bail after completion of three months. 2.5-Thereafter second Miscellaneous Application No. 1855 of 2023 in SLP (Crl) No. 3438 of 2023 was preferred by the applicant before Hon'ble Supreme Court, but the same was dismissed as withdrawn reserving liberty to the petitioner/applicant to move High Court, if so advised, with the observation that if application for bail is filed by the applicant, the same shall be considered by the High Court as expeditiously as possible. 2.6-In view of the above, the instant second bail application under Section 439 of Cr.P.C. has been filed on behalf of the applicant with a prayer to release him on bail in Case Crime No. 462 of 2020 (Sessions Case No. 352 of 2021-State Vs. Kamlesh Pathak and Others) under Section 3(1) of Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station-Auraiya, District-Auraiya pending in the court of Additional District and Session Judge, Court No.-II, Auraiya. 3-Main substratum of argument of Mr. Saghir Ahmad, learned Senior Counsel for the applicant is that the applicant is Ex-MLC, who is in jail in the present case since 14.07.2020, but his trial has not yet been concluded and till date out of sixteen prosecution witnesses, only six prosecution witnesses of charge sheet have been examined before the trial court. As on date, applicant is on bail in all pending criminal cases against him except in the present case and one co-accused Avanish Pratap Singh has been granted bail, therefore applicant is entitled to be released on bail. 3.1-So far as criminal history of the applicant is concerned, it is submitted that applicant has criminal history of total 37 cases, details whereof are as under:-

S.No. Case Crime no. & year Under sections Police Station and District.

1. 82 of 1985 u/s 186, 189, 353, 504 IPC.

Police station Kotwali, District Auraiya.

2. 481 of 1984 u/s 332, 353, 171-F IPC & section 132 (2) Representation of the People Act. Police station Kotwali Auraiya, District Etawah.

3. 480 of 1984 u/s 332. 353, 171-F IPC & section 132 (2) Representation of the People Act. Police station Kotwali Auraiya, District Etawah.

4. 479 of 1984 u/s 332. 353, 171-F IPC & section 132 (2) Representation of the People Act. Police station Kotwali Auraiya, District Etawah.

5. 55 of 1974 u/s 353, 393, 307 IPC.

Police station Kotwali Auraiya, District Etawah.

6. 402 of 1983 u/s 147 and 353 IPC.

Police station Kotwali Auraiya, District Etawah.

7. 273 of 2005 u/s 147, 148, 149, 307, 325 IPC.

Police station Kotwali, District Auraiya.

8. 383 of 1974 u/s 302 IPC.

Police station Kotwali Auraiya, District Etawah.

9. 469 of 2007 u/s 395 and 397 IPC.

Police station Kotwali, District Auraiya.

10. 43 of 1991 u/s 395, 397, 332, 353 IPC.

Police station Kotwali, District Auraiya.

11. 365 of 1989 u/s 395, 397 converted into 147, 148, 149, 323 IPC.

Police station Kotwali, District Auraiya.

12. 364 of 1989 u/s 395 & 397 IPC.

Police station Kotwali, District Auraiya.

13. 175 of 1989 u/s 395 & 397 IPC converted into 147, 148, 149 and 323 IPC.

Police station Kotwali, District Auraiya.

14. 24 of 1986 u/s 395 & 397 IPC converted into 323 and 504 IPC.

Police station Kotwali, District Auraiya.

15. 11 of 1984 u/s 147, 148, 149, 323, 506 IPC.

Police station Auraiya, District Auraiya.

16. 30 of 2004 u/s 147, 148, 149, 307, 436, 323, 353, 332, 341, 435 IPC and section 7 Criminal Law Amendment Act & 3/6 of Prevention of Damages to Public Property Act. Police station Kotwali, District Auraiya.

17. 338 of 2003 u/s 405, 406, 420, 109, 120-B IPC.

Police station Kotwali, District Auraiya.

18. 337 of 2003 u/s 405, 406, 420, 109, 120-B IPC.

Police station Kotwali, District Auraiya

19. 336 of 2003 u/s 405, 406, 420, 109, 120-B IPC.

Police station Kotwali, District Auraiya

20. 8 of 2002 u/s 147, 148, 149, 323, 504 IPC.

Police station Mangaipur, District Kanpur Dehat.

21. 63 of 1989 u/s 188 IPC.

Police station Kotwali, District Auraiya.

22. 23 of 2009 u/s 2/3 (1) of UP Gangster Act.

Police station Kotwali, District Auraiya.

23. 487 of 2008 u/s 147, 148, 149, 307, 436, 336, 323, 353 IPC & section 7 Criminal Law Amendment Act and section 3/6 of Prevention of Damages of Public Property Act. Police station Kotwali, District Auraiya.

24. 487-A of 2008 u/s 147, 148, 149, 307, 436, 336, 323, 353 IPC & section 7 Criminal Law Amendment Act and section 3/6 of Prevention of Damages of Public Property Act. Police station Kotwali, District Auraiya.

25. 97 of 2001 u/s 323, 504, 506 IPC and section 7 of Criminal Law Amendment Act. Police station Kotwali Auraiya, District Auraiya

26. 330 of 1993 u/s 224 and 225 IPC.

Police station Kotwali, District Etawah.

27. 30-E of 2004 u/s 147, 323, 504, 506, 427, 436 IPC.

Police station Kotwali, District Auraiya.

28. 30-C of 2004 u/s 147, 336, 504 IPC.

Police station Auraiya, District Auraiya.

29. 52 of 1986 121, 128 of Railway Act.

P.S. GRP Auraiya, District Etawah

30. 621 of 1999 u/s 25 (1) (B) of Arms Act.

P.S. Kotwali, District Auraiya

31. Arising out of case crime No. 25 of 2009 3 (2) of the National Security Act.

P.S. Kotwali, District Auraiya

32. Arising out of case crime No. 189 of 2020 3 (2) of the National Security Act.

P. S. Auraiya, District Auraiya.

33. 01 of 2009 3 UP Goondas Act P.S. Auraiya, District Auraiya

34. ST No. 81 of 2021, (State vs. Kamlesh Pathak and Others) arising out with case crime no. 189 of 2020. 147, 148, 149, 302, 307, 506 IPC and section 7 of Criminal Law Amendment Act. P.S. Auraiya, District Auraiya

35. ST NO.83 OF 2021, (State vs. Kamlesh Pathak) arising out with case crime no. 190 of 2020. 25/27 Arms Act.

P.S. Auraiya, District Auraiya

36. ST NO. 82 of 2021, (State vs. Kamlesh Pathak and Others) arising out with case crime no. 196 of 2020. 147, 148, 149, 353, 307 IPC and section 7 Criminal Law Amendment Act. P.S. Auraiya, District

Auraiya.

37. Case Crime no. 462 of 2020 (present case) under Section 3(1) of U.P. Gangster and Anti-Social Activities (Prevention) Act P.S. Auraiya, District Auraiya.

Explaining the above criminal history of the applicant, it is further pointed out that:-

i- In 08 criminal cases mentioned in the above chart from serial no. 01 to 08, applicant has been acquitted.

ii- In 13 criminal cases mentioned in the above chart from serial no. 09 to 21, closer reports have been submitted.

iii- Total 7 criminal cases against the applicant mentioned in the above chart from serial no. 22 to 28 have been withdrawn by the State of U.P. iv- In 2 criminal cases mentioned in the above chart from serial no. 29 and 30, applicant did not receive any notice or summon.

v- Two cases against the applicant mentioned in the above chart at serial nos. 31 and 32 were related to preventive in nature under Section 3 (2) of the National Security Act.

vi- One case against the applicant mentioned in the above chart at serial no. 33 has been decided.

vii- In four criminal cases mentioned in the above chart from serial no. 34 to 37, applicant is facing trial.

4-On the other hand, learned Additional Government Advocate for the State as well as Mr. Anil Tiwari, learned Senior Counsel appearing on behalf of complainant in above noted double murder case vehemently opposed the prayer for bail of the applicant by contending that in Case Crime No. 189 of 2020, under Sections 147, 148, 149, 302, 307, 506 I.P.C. and Section 7 of Criminal Law Amendment Act, Police Station Kotwali Auraiya, District Auraiya, the applicant has been granted bail by the coordinate Bench of this Court vide order dated 13.04.2022 passed in Criminal Misc. Bail Application No. 46390 of 2020, against which complainant has preferred SLP (Cri.) No. 004386 of 2022 before Hon'ble the Apex Court, in which notice has been issued to the applicant vide order dated 02.05.2022. The State of U.P. has also preferred SLP (Cri.) No. 006080 of 2022. Much emphasis has been given by contending that the influence of the applicant is evident from the record that in thirteen criminal cases closure report has been filed by the police which include heinous offences like attempt to murder, attempt to dacoity and forgery etc., therefore in case bail is granted to the applicant in the instant case, the possibility of tampering the witnesses and evidence adopting different modus operandi cannot be

ruled out. Lastly it is submitted that applicant and his associates / gang members are habitual to commit crime of different nature adopting different modus operandi, hence considering the nature of crime and gravity of offence, bail application of the applicant is liable to be rejected.

5-Having heard learned counsel for the parties and examined the matter in its entirety, I find that it is not in dispute that applicant is having long criminal history as noted above. In the SLP (Cri.) No. 004386 of 2022 filed by the complainant and SLP (Cri.) No. 006080 of 2022 filed by the State against the order dated 13.04.2022 granting bail to the applicant in above noted Case Crime No. 189 of 2020, notice has been issued by the Hon'ble Supreme Court and the same are still pending before the Hon'ble Supreme Court. At present following four cases are pending against the applicant in the Court of Special Court MP/MLA, District Auraiya. Present status of the same are as under:-

(i) Session Trial No. 81 of 2021 arising out of Case Crime No. 189 of 2020, under Sections 147, 148, 149, 302, 307, 506 I.P.C. and Section 7 of Criminal Law (Amendment) Act, Police Station Auraiya, District Auraiya, in which out of 17 prosecution witnesses, statements of 12 prosecution witnesses have been recorded before the trial court.

(ii) Session Trial No. 82 of 2021 arising out of Case Crime No. 196 of 2020 under Sections 147, 148, 149, 353, 307 I.P.C. and Section 7 of Criminal Law (Amendment) Act, Police Station Auraiya, District Auraiya, in which out of 15 prosecution witnesses, statements of 09 prosecution witnesses have been recorded before the trial court.

(iii) Session Trial No. 83 of 2021 arising out of Case Crime No. 189 of 2020, under Sections 25,30 and 27 Arms Act, Police Station Kotwali, Auraiya, District Auraiya, in which out of 16 prosecution witnesses, statements of 03 prosecution witnesses have been recorded before the trial court.

(iv) GST No. 352 of 2021(present case) arising out of Case Crime No. 462 of 2020 under Section 3(1) of U.P. Gangster and Anti-Social Activities (Prevention) Act, Police Station Auraiya, District-Auraiya, in which out of 16 prosecution witnesses of charge sheet, statements of 6 prosecution witnesses have been recorded before the trial court.

6-It is well settled that criminal history of the accused is also one of the relevant factor while considering bail application. In this regard, it is relevant to refer following judgments of the Apex Court. 6.1-Hon'ble Apex Court in the case of Neeru Yadav Vs. State of U.P. (2015)3 SCC 527, after referring a catena of judgments of Hon'ble Supreme Court on the consideration of factors for grant of bail, held as under:

"This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedent of the accused. What has weighed with the High Court is the doctrine of parity. A history sheeter involved in the nature of crimes which we have reproduced herein above, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner."

6.2-The aforesaid judgement has further been followed by the Apex Court in the case of Sudha Singh Vs. State of U.P. and another, 2021(4) SCC 781 and Indresh Kumar Vs. State of U.P. and another, 2022 Live law (SC) 610. 6.3- In Sudha Singh (Supra) the Court held as under:

We find in this case that the high court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. It is needless to point out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims.

6.4- In Indresh Kumar (Supra) the Hon'ble Supreme Court held that "as argued on behalf of the appellant, the High Court has, apparently ignored the criminal antecedents of the respondent-accused. The respondent-accused has the criminal history of seven cases.

The Court further held as under:

"If the High Court had seriously considered the gravity of the offence, there would have been some indication of what was the apparently extenuating circumstance, which entitled the respondent-accused to bail. Ex facie, the allegations are grave, the punishment is severe and it cannot be said that there are no materials on record at all."

7- Here it would also be apposite to quote the provisions of Section 19 (4) and (5) of U.P. Gangster and Anti-Social Activities (Prevention) Act, because the same is an additional condition for considering bail under the above mentioned Gangster Act, 1986, which are as under:-

Section 19. Modified application of certain provisions of the code :-

(1)

(2)

(3).....

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless--

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(5) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code.

o8- In the light of above mentioned provisions, it is clear that the provisions provided in Section 19 (4) (b) of the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, is mandatory in nature for considering the bail application under the said Act, wherein it has been provided that an accused of an offence punishable under U.P. Gangster and Anti-Social Activities (Prevention) Act, can be released on bail if the Court hearing bail application is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. o9- I also find that it is not in dispute that the applicant has a long criminal history of 37 cases behind him since 1974. The courts while releasing the accused-applicant on bail imposed one of the conditions in most of the bail orders that applicant will not further indulge in criminal activity, but it appears that in the eyes of the accused-applicant, such condition / direction is nothing but a mere formality, whereas said condition is also one of the criteria for considering bail in subsequent crime of the accused. Year wise break up of the criminal cases registered against the applicant are as follows:-

In the year 1974..... 2 cases, In the year 1983..... 1 case, In the year 1984..... 4 cases, In the year 1985..... 1 case In the year 1986..... 2 cases In the year 1989..... 4 cases In the year 1991..... 1 case In the year 1993..... 1 case In the year 1999..... 1 case In the year 2001..... 1 case In the year 2002..... 1 case In the year 2003..... 3 cases In the year 2004..... 3 cases In the year 20051 case In the year 2007..... 1 case In the year 2008..... 2 cases In the year 2009..... 3 cases In the year 2020..... 4 cases 10- This Court is of the view that those who are protector of the society being MP/MLA/MLC carry a big responsibility on their shoulders towards the public and they are not expected to commit crime or indulge in criminal activities causing dent to the healthy society in any manner. The higher is the position, the grater is the responsibility towards the society at large. Taking into consideration the long criminal history of the applicant, other attending factors, surrounding circumstance

of the case as well as possibility of tampering the witnesses and misuse of liberty, I do not find reasonable or good ground for believing to record my satisfaction in terms of provisions of Section 19 (4) (b) of U.P. Gangster and Anti-Social Activities (Prevention) Act, that the applicant is not guilty of offence and will not further indulge in any criminal activity while being released on bail.

11-So far as submission on behalf of the applicant that the applicant has been granted bail in all the cases mentioned in gang chart and therefore he is liable to be granted bail in this case also is concerned, the same is not acceptable, because the offence punishable under Section 3 of U.P. Gangster and Anti-Social Activities (Prevention) Act is an independent offence. Involvement of the accused in various other offences, in fact, constitute circumstances and evidence against him which may indicate that the accused is member or leader or organiser of a group which indulges in the kind of activities set out under the Gangster Act. The gravity of an offence under Section 3 of the U.P. Gangster and Anti-Social Activities (Prevention) Act may vary from case to case, therefore no universal rule can be framed to grant bail to the accused for the offence under Gangster Act.

12-The another submission on behalf of the applicant that one co-accused has been granted bail, therefore applicant is also entitled for bail on the ground of parity is concerned, I find that bail to the co-accused-Avanish has been granted without considering the mandatory provisions contained under Section 19 (4) (b) of U.P. Gangster and Anti-Social Activities (Prevention) Act and considering the judgement in the case of Dataram Singh Vs. State of U.P. and another, (2018)3 SCC 22, which is not applicable to the fact of the present case in the light of the judgement of Hon'ble Supreme Court in the case of Indresh Kumar Vs. The State of Uttar Pradesh, 2022 Live Law (SC) 610, therefore the bail order dated 18.8.2022 passed in Criminal Miscellaneous Bail Application No. 35331 of 2022 of co-accused Avanish is not helpful to the applicant.

13- In Deepak Yadav Vs State of U.P. and another, (2022) 8 SCC 559, bail granted by the Allahabad High Court to the accused in a murder case only on the basis of parity, has been cancelled by the Hon'ble Apex Court by observing that the High Court should have considered factors such as criminal background of the accused and nature of the offence, etc. Hon'ble Supreme Court considering plethora of judgements on the guiding principle for adjudicating a regular bail held as under:

26. "The importance of assigning reasoning for grant or denial of bail can never be undermined. There is prima facie need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious offence. The sound reasoning in a particular case is a reassurance that discretion has been exercised by the decision maker after considering all the relevant grounds and by disregarding extraneous considerations."

"XXXXXXXXXXXXXXXXXXXX"

"39. Grant of bail to the Respondent No. 2/accused only on the basis of parity shows that the impugned order passed by the High Court suffers from the vice of non-application of mind rendering it unsustainable. The High Court has not taken into consideration the criminal history of the respondent No. 2/accused, nature of crime, material evidences available , involvement of respondent No. 2/accused in the said crime and recovery of weapon from his possession."

14- This Court is also of the view that further detail discussion relating to the incident and merit of the case need not be referred to herein since the allegations and the defence thereto is still open to be urged by the parties in the trial Court. 15-Considering the criminal history of the applicant, overall facts and other attending circumstances of the case as well as keeping in view the submissions advanced on behalf of parties, gravity of offence, role assigned to applicant, severity of punishment, possibility of tampering the evidence and stage of the trial of the applicant as noted above, I do not find any good ground to release the applicant on bail. 16-Accordingly, the bail application of applicant is rejected. 17- Section 12 of U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 provides that trial under the Act of any offence by special court shall have precedence over the trial of any other case against the accused in any other court and shall be concluded in preference to the trial of such other case and accordingly trial of such other case shall remain in abeyance. The validity of the aforesaid Act was in question before the Hon'ble Supreme Court in the case of Dharmendra Kirthal Vs. State of U.P. and another, (2013) 8 SCC 368. The Apex Court after detail analysis, upheld the constitutional validity of Section 12 of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 by holding that it does not infringe any of the facets of Articles 14 and 21 of the Constitution of India. 18- Accordingly, it goes without saying that the case against the applicant under the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 shall have precedence over the trial of any other case against the accused. 19-In the matter of MPs and MLAs directions have also been issued by the Hon'ble Supreme Court for expeditious disposal of cases. Accordingly trial Court is directed to conclude the trial of the applicant expeditiously in accordance with provisions of Section 309 Cr.P.C. without granting any adjournment to either of the parties taking into consideration the provisions of Section 12 of U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986. 20-It is made clear that the observations contained in the instant order is confined to the issue of bail and shall not affect the merit of the trial. Order Date: 19.03.2024 Saurabh