

Abbas Ansari vs State Of U.P. on 18 December, 2024

Author: Samit Gopal

Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:198455

Court No. - 80

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41303 of 2024

Applicant :- Abbas Ansari

Opposite Party :- State of U.P.

Counsel for Applicant :- Upendra Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Sri Upendra Upadhyay, learned counsel for the applicant and Sri Manish Goyal, learned Senior Advocate / Additional Advocate General, Sri A.K. Sand, learned Government Advocate, both assisted by Sri J.K. Upadhyay, learned AGA-I and Sri Rupak Chaubey, learned AGA-I for the State and perused the record.

2. The present bail application under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed by the applicant Abbas Ansari with the prayer to release him on bail in Case Crime No. 556 of 2024, under Section 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station Kotwali Karvi, District Chitrakoot, during the pendency of trial.

3. Before advertng to the facts of the case, the fact relevant to the matter is being referred to.

4. The applicant has filed a Special Leave to Appeal (Criminal) No. 10235 of 2024 (Abbas Ansari vs. State of Uttar Pradesh) before the Apex Court seeking regular bail in Case Crime No. 88 of 2023, Police Station Karvi Kotwali Nagar, District Chitrakoot with which Writ Petition (Criminal) No. 380 of 2024 seeking bail in F.I.R. No. 556 of 2024 registered at Police Station Kotwali, Chitrakoot was connected and both the matters were disposed of by an order dated 18.10.2024 by the Apex Court in which the applicant therein was granted bail in Case Crime No. 88 of 2023 whereas, the writ petition filed by him was disposed of with the directions that the petitioner may first approach the High Court for grant of bail and High Court was requested to decide the bail application on priority basis positively within a period of four weeks from the date filing of such petition. The order passed therein is quoted herein below :-

"SLP (Crl) No. 10235 of 2024.

1. The petitioner, who is a member of the U.P. State Assembly from Mau Assembly seat, seeks his enlargement on regular bail in Case Crime No.88/2023 under Section 387, 222, 186, 506, 201, 120-B, 195-A and 34 of the Indian Penal Code, 1860 (in short, the "IPC") and Sections 7, 8 and 13 of the Prevention of Corruption Act, 1988 (in short, the "P.C. Act"), besides Section 42(b) & 54 of the Prisons Act, 1894 (in short, the "1894 Act") and Section 7 of the Criminal Law (Amendment) Act, 2013 (in short, the "2013 Act"), registered at Police Station Karvi Kotwali Nagar, District Chitrakoot. The charge-sheet in the above-mentioned case was filed and charges under Sections 387, 506, 201, 120-B, 195A, 186, 511 and 34 of IPC and Section 8 of the P.C. Act, Section 42(b) & 54 of the 1894 Act and Section 7 of the 2013 Act have been framed.

2. As per the allegations contained in the FIR, the petitioner was lodged in District Jail, Chitrakoot. His wife has been visiting the petitioner in jail along with driver and co-accused Niyaz. It is alleged that the petitioner used the mobile phones of his wife to threaten the witnesses and officials, who were connected with the prosecution against him. Those mobile phones were also statedly used to extend threats to various persons to extort money etc.

3. The petitioner was already in custody in other cases and was formally arrested in the instant case on 11.02.2023. He applied for bail which came to be declined by the Special Judge vide order dated 14.06.2023 primarily on the ground that the petitioner's wife was carrying two mobile phones which were used by the petitioner for unlawful purposes, as illustrated above. The petitioner thereafter approached the High Court, but vide impugned order dated 01.05.2024, he has been declined the bail inter alia on the ground that he may misuse his position as MLA to influence the witnesses and tamper with the evidences and that the petitioner has criminal history of 10 cases being one under the PMLA. The High Court further observed that two mobile phones were recovered from the petitioner's wife within the jail premises. She could not have access to those phones without the alleged connivance of the jail Authorities.

4. We have heard learned senior counsel for the petitioner as well as learned senior counsel representing the State of Uttar Pradesh and perused the record.

5. Having regard to the fact that the investigation is complete; charge-sheet has already been filed and the petitioner has been in custody for more than 1 ½ years in the instant case and keeping in view the fact that the conclusion of trial will take some reasonable time, however, without expressing any opinion on the merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail bonds to the satisfaction of the Trial Court. The petitioner shall fully cooperate with the trial proceedings and shall remain present in Court on each and every date of hearing unless granted exemption from personal appearance.

6. The special leave petition is, accordingly, disposed of.

7. All pending applications, if any, also stand disposed of.

8. The instant writ petition has been filed by the petitioner seeking bail in FIR No.556/2024 registered at police station Kotwali, Chitrakoot under Section 2 and 3 of the Uttar Pradesh Gangster and Anti-Social (Prevention) Act, 1986.

9. Having heard learned senior counsel for the petitioner and learned Additional Solicitor General of India on behalf of State of Uttar Pradesh, we are of the opinion that let the petitioner first approach the High Court for grant of bail. However, keeping in view the nature of relief and the fact that the petitioner has been incarcerated in some other cases for a reasonably long period, we request the High Court to decide the bail application on priority basis positively within a period of four weeks from the date of filing of such petition.

10. Registry of the High Court is directed to place this order before the Hon'ble Chief Justice of the High Court so that the bail application to be moved by the petitioner can be listed before the appropriate Bench to ensure compliance of the time-line mentioned above.

11. In the event of any delay due to unforeseen circumstances, liberty is granted to the petitioner to approach this Court.

12. The writ petition is, accordingly, disposed of.

13. All pending applications, if any, also stand disposed of."

5. Notice of the present bail application was served in the office of the learned Government Advocate on 05.11.2024 and the matter was then presented in the office for filing on 06.11.2024.

6. The matter was taken up on 11.11.2024 on which date, learned Government Advocate sought time for filing counter affidavit which was granted by a co-ordinate Bench of this Court and the matter was directed to be listed on 25.11.2024. The order passed on 11.11.2024 is quoted herein below :-

"Heard Mr. Upendra Upadhyay, the learned counsel for applicant and Mr. A.K. Sand, the learned Additional Government Advocate assisted by Mr. J.K. Upadhyay and Mr. Prashant Kumar, the learned A.G.A.

On the matter being taken up the learned Government Advocate seeks time to file counter affidavit.

In view of above, ten days is granted time to the learned Government Advocate, to file his counter affidavit.

Matter shall re-appear as fresh on 25.11.2024."

7. Subsequently, the matter was taken up on 25.11.2024 and the learned Government Advocate informed the Court that counter affidavit has been filed but the same was not on record and hence, the office was directed to trace it and place it on record by the next date. The matter was directed to be listed on 28.11.2024. The order passed on 25.11.2024 is quoted herein below :-

"1. Heard Sri Upendra Upadhyay, learned counsel for the applicant, Sri A.K. Sand, learned Government Advocate along with Sri J.K. Upadhyay, learned AGA, for the State and perused the records.

2. Learned counsel for the State submits that he has filed counter affidavit in the office on 23.11.2024. The same is not on record.

3. Office to trace out the same and place it on record positively by the next date.

4. A rejoinder affidavit to the same filed on behalf of the applicant is already on record.

5. The hearing of the matter has been expedited by the Apex Court vide order dated 18.10.2024 passed in SLP (Criminal) No. 10235 of 2024 (Abbas Ansari Vs. State of Uttar Pradesh) in which in paragraph no. 9 this Court has been requested to decide the bail application on priority basis positively within a period of four weeks from the date of filing of the said petition.

6. The records show that the present bail application has been filed on 05.11.2024 which is after about 18 days itself from the date of the order of the Apex Court.

7. Be that as it may, let the matter be listed on 28.11.2024."

8. On 28.11.2024, a request was made on behalf of the applicant for adjournment of the matter. The same was allowed but the learned counsels were reminded that the hearing of the bail application has been expedited by the Apex Court. The matter was then ordered to be listed on 11.12.2024. The order passed on 28.11.2024 is quoted herein below :-

"1. A request through e-mail has been sent by Sri Upendra Upadhyay, Advocate learned counsel for the applicant that Sri Kapil Sibal, learned Senior Advocate is to appear and argue the matter through video conferencing. When the matter was taken up Sri Upendra Upadhyay, Advocate on behalf of the applicant is present in Court who submitted that Sri Sibal is connected on the web portal on which on being connected, Mr. Nizam Pasha, Advocate appears and submits that Sri Sibal is busy elsewhere and hence the matter be adjourned.

2. Sri Manish Goyal, learned Senior Advocate/Additional Advocate General assisted by Sri J.K. Upadhyay, learned AGA and Sri A.K. Sand, learned Government Advocate, for the State are present.

3. Since there is a request on behalf of the applicant to adjourn the matter. The same is allowed.

4. Learned counsels for the applicant are reminded that the hearing of the present bail application has been expedited by the Apex Court in a petition filed on behalf of the present applicant and the present bail application has itself been filed after 18 days of the order of the Apex Court.

5. Let the matter be listed on 11.12.2024."

9. The facts of the case are that the first information report was lodged on 31.08.2024 by Upendra Pratap Singh Sub-Inspector, Police Station Kotwali Karvi, District Chitrakoot under Section 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 against Abbas Ansari (present applicant), Navneet Sachan, Niyaz Ansari, Faraz Khan and Shahbaz Alam Khan with the allegation that on 31.08.2024, he was on his routine duty of maintaining law and order for the forthcoming Amawashya Mela on which, he met some persons, who informed him that the accused persons have formed a gang for financial and other benefits. They put persons in fear and extort money and assault them due to which, fear and terror is there within the area of the police station concerned. Against the gang leader Abbas Ansari and other active members, a case as Case Crime No. 88 of 2023 under Sections 387, 506, 201, 120-B, 195-A, 186, 511, and 34 I.P.C., Section 8 of the Prevention of Corruption Act, 1988, Section 42(b) / 54 of the Prisons Act and Section 7 of the Criminal Law (Amendment) Act, Police Station Kotwali Karvi District Chitrakoot is registered in which after investigation a charge sheet no. 159 of 2023 dated 10.04.2023 and 159(C) of 2023 dated 22.05.2023 have been filed in Court which is pending before the Court. There is terror amongst the public and due to fear and terror, no one is ready to give evidence against them. The gang along with his leader and active members, if left, would be prejudicial to the society. The act is covered under Section 2(kha) (1)(11)(25) punishable under Section 3 of the Gangsters Act. The gang is also registered at the

district level as Gang No. D-01/2024 of which Abbas Ansari is the gang leader and the other persons are its active members. A gang chart has also been approved by the District Magistrate, Chitrakoot on 29.08.2024.

10. A gang chart was prepared on 28.08.2024 which was duly approved by the District Magistrate, Chitrakoot on 29.08.2024 showing the applicant as a gang leader whereas the other four accused as the gang members who were stated to be involved in Case Crime No. 88 of 2023. It was further mentioned that charge sheet in the matter has been submitted which is pending before the court concerned. Further insofar as, the applicant is concerned, the gang chart also states that the applicant is involved in 9 other criminal cases.

11. Learned counsel for the applicant submitted as under :-

(i) The applicant is presently a Member of Legislative Assembly (MLA) from Mau constituency of Uttar Pradesh (paragraph 3 of the affidavit has been placed).

(ii) The applicant although is in jail since 04.11.2022 in connection with other cases but in the present case, his remand was prepared on 06.09.2024 and as such he is in jail in the present case since 06.09.2024 (paragraph 7 of the affidavit has been placed).

(iii) The case shown in the gang chart, being a solitary case, is a case of false implication in which, the applicant has been granted bail by the Apex Court in Special Leave to Appeal (Criminal) No. 10235 of 2024 (Abbas Ansari vs. State of U.P.) vide order dated 18.10.2024. (paragraph 10 and Annexure-3 of the affidavit has been placed).

(iv) The applicant is involved in 10 other cases in which, in 8 cases, he is on bail whereas, in two cases, the proceedings have been quashed. (paragraph 11 to 21 of the affidavit has been placed).

(v) National Security Act was also imposed upon the applicant but the detention order was quashed vide order dated 02.02.2024 passed by the High Court (paragraph 22 of the affidavit has been placed).

(vi) The applicant has no concern with district Chitrakoot, as he was transferred from District Jail Chitrakoot to District Jail Kasganj in February, 2023 (paragraph 25 of the affidavit has been placed).

(vii) The present case is a case due to political enmity, selective and targeted misuse of law.

(viii) The applicant is neither gang leader nor member of any gang.

(ix) The judgement in the case of Angad Rai @ Jhullan Rai vs. State of U.P., 2023 : AHC : 213038 (paragraph 20 and 21 has been placed).

(x) There is no misuse of bail by the applicant in any matter. The applicant be thus, enlarged on bail.

12. Learned counsel for the State while vehemently opposing the prayer for bail submitted as under :-

(i) The offence under the Gangsters Act is an independent offence. It is a separate and distinct offence in itself.

(ii) The applicant is a gang leader of a gang which is registered as Gang No. D-01 of 2024 which was registered on 23.01.2024.

(iii) The gang chart of the present case was approved by the District Magistrate concerned on 29.08.2024.

(iv) The applicant has criminal history of 11 cases including a case under the PMLA Act, page 8 of the counter affidavit dated 16.11.2023 has been placed. The cases against the applicant are as under :-

201/222/34/387/506/511	8	120 /186/195
42 /54		07
i 188/171 ¢	£	10.04.2023
420/423/465/467/468/471/474/477 /120		05.06.2022 £
16.03.2021 □ 171 /188/341		£
05.06.2022 £ 120 /420/467/468/471	3	
¥ □	20.09.2021 f £ ECIR/ALSZO 27/2021 ¾	
PMLA	¤'	¤'

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□ 420/467/468/471	30 '	¥ □
11.12.2020 f £ 171 ¢/506/186/189/153 /120		£
11.05.2022 £ 188/171	133	
30.04.2022 £ 386/342/420/120		□
04.11.2023 □	2/3 □*	□
¤	i	

(v) Out of the 11 cases including the present case, one case is under PMLA whereas in 9 cases, charge sheet has been submitted.

(vi) The applicant is involved in an organised crime.

(vii) The applicant being a public representative was not expected to be involved in cases of such nature specially after grant of bail.

(viii) The action of the application was such that even the Election Commission had put a restraint on his convincing during election.

(ix) The conditions stipulated in Section 19 of the Gangsters Act are not satisfied.

(x) The investigation in the present matter is going on and as such his release may hamper the investigation.

(xi) The judgements / orders of the Apex Court and this Court have been placed before this Court which are as under :-

Sl. No. Citation

1.

1987 SCC Online All 203 Ashok Kumar Dixit vs. State of U.P. and another Paragraphs :151 - 160

2. (2013) 8 SCC 368 Dharmendra Kirthal Vs. State of U.P. and another Paragraphs : 2, 10, 15 - 22, 32, 36, 39 - 45

3. (2012) 10 SCC 561 State of Maharashtra Vs. Vishwanath Maranna Shetty Paragraphs : 29 & 30

4. (2004) 3 SCC 549 Collector of Customs, New Delhi Vs. Ahmadalieva Noida Paragraphs : 6, 7 & 8

5. 2024 SCC Online All 2669 Kamlesh Pathak vs. State of U.P.

6. CrI. Misc. Bail Appl. No. 8970 of 2023 Order dated 11.11.2024 Alishan vs. State of U.P. Paragraphs : 20 - 25

7. CrI. Misc. Bail Appl. No. 18588 of 2021 Order dated 21.05.2024 Sabir Khan vs. State of U.P. Paragraphs : 6 - 9

8. (2008) 61 ACC 642 Udham Singh vs. State of U.P. Paragraphs : 9 - 10

(xii) An F.I.R. under the Gangsters Act can also be lodged even if there is no case against an accused.

(xiii) The applicant is actively involved in the criminal activities as could be seen from the fact that there are in all 11 cases against him.

(xiv) The applicant is a leader of a gang which has four other active members who are working with him actively in an organized manner and are involved in various criminal activities.

(xv) The bail application be thus, rejected.

13. After having heard the learned counsels for the parties and perusing the records, it is evident that the applicant has sought bail in a case lodged against him under the Gangsters Act in which he has been shown as a gang leader of a gang. There are four other members of the gang who are stated to be active members. The gang is a duly registered gang with the government within the district. The applicant is a Member of Legislative Assembly (MLA). The applicant has criminal antecedents and there are in all 11 cases including the present case against him. The cases are of various natures including offence under PMLA. The nature of case is such in which even Officers of jail facilitated his wife and driver to spend time privately with him in their office which was against the law, rules. The status of the applicant-accused as an MLA does not at all call upon him to indulge in criminal activities and acts against law, rules and procedure. The investigation in the present matter is pending in which evidence is yet to be collected, subsequent to which it shall conclude. There are good chances of the applicant tempering with the investigation. There are also good chances of the applicant of repetition of offence looking to the criminal antecedents as reported against him which show his involvement in various cases. The involvement in various cases possesses potential threat to the life and liberty of witnesses and public.

14. The law with regards to grant of bail and consideration of prayer for bail in a case under The Gangsters Act is well settled. The Apex Court, in *Sudha Singh v. State of U.P.* : (2021) 4 SCC 781 while considering challenge to an order of a High Court granting bail to an accused in a matter under the Gangsters Act held as under:

"7. 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.

8. This Court in *Neeru Yadav v. State of U.P.* [*Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] held that when a stand was taken that the accused was a history-sheeter, it was imperative for the High Courts to scrutinise every aspect and not capriciously record that the accused was entitled to be released on bail on the ground of parity.

9. In *Ash Mohammad v. Shiv Raj Singh* [*Ash Mohammad v. Shiv Raj Singh*, 2012) 9 SCC 446 : (2012) 3 SCC (Cri) 1172], this Court observed that when citizens were scared to lead a peaceful life and heinous offences were obstructions in the

establishment of a well-ordered society, the courts play an even more important role, and the burden is heavy. It emphasised on the need to have a proper analysis of the criminal antecedents of the accused.

10. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* [*Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765], it was held that this Court ordinarily would not interfere with a High Court's order granting or rejecting bail to an accused. Nonetheless, it was equally imperative for the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the ratio set by a catena of decisions of this Court. The factors laid down in the judgment were:

(i) Whether there was a prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of accusations;

(iii) severity of the punishment in the event of a conviction;

(iv) danger of the accused absconding or fleeing, if granted bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of repetition of the offence;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger of justice being thwarted by grant of bail.

11. There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail."

15. After considering the facts of the case and the other relevant facts as stated above, the law regarding consideration of prayer for bail in a case of such nature and also the fact that the investigation is still pending in the present matter and also the fact that the applicant is in jail in the present matter since 06.09.2024, no ground for interference is made out.

16. The bail application is rejected.

(Samit Gopal,J.) Order Date :- 18.12.2024 Manoj