

Anand Shrivas vs State Of U.P. on 28 March, 2024

Author: Manju Rani Chauhan

Bench: Manju Rani Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2024:AHC:53845

Court No. - 71

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9478 of 2024

Applicant :- Anand Shrivas

Opposite Party :- State of U.P.

Counsel for Applicant :- Sushil Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan, J.

Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

The instant bail application has been filed on behalf of applicant, Anand Shrivas with a prayer to enlarge him on bail in Case Crime No. 526 of 2023, under Sections 363, 382, 511, 454, 420, 411, 467, 468, 471, 120-B I.P.C., Police Station Kotwali, District Lalitpur during pendency of trial.

Learned counsel for the applicant contends that the applicant has been falsely implicated in the instant case. It is submitted by learned counsel for the applicant that the first information report was lodged against unknown persons with regard to attempt of kidnapping of the minor child of the informant. The applicant was not named in the first information report. The name of the applicant

has surfaced on the basis of the information given by Mukhbir khas. No CCTV footage has been collected during investigation nor any photograph is part of case diary. He further submits that co-accused Vinay Basor having identical role, has already been granted bail vide order dated 09.10.2023 by co-ordinate Bench of this Court passed in Criminal Misc. Bail Application No. 42815 of 2023. He has next stated that criminal history of the applicant has properly been explained in para 13 and 14 of the affidavit. Applicant is languishing in jail since 26.07.2023. In case, he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial by all means and there is no chance of applicant fleeing away from judicial process or tampering with the witnesses. Learned counsel for the applicant lastly submits that applicant is also entitled to be released on bail on the ground of parity.

Per contra learned A.G.A. has opposed the bail prayer of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, however, they could not dispute the fact that the co-accused has already been released on bail. Learned AGA for the State has pointed out one criminal case against the applicant which is of the year 2024, subsequent to the present case.

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."

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.

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.

The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because he or she is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless

the procedure established by law is followed, and the procedure must be just and reasonable. 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.

The object of the bail is to secure the attendance of the accused, the detention of the accused pending trial cannot be punitive in nature as there is presumption of innocence in favour of the accused person. Learned A.G.A. has not brought any facts and circumstances to demonstrate that the character of the accused-applicant (s) is such that his mere presence at large would intimidate the witness.

Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, the period of detention of the applicant for the alleged offence, submissions of learned counsel for the parties, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant involved in the aforesaid case crime be released on bail on his furnishing a personal bond and two sureties each of 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.

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

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merits of the case.

Order Date :- 28.3.2024 Arti