

Mange Lal vs State Of U.P. on 2 February, 2021

Author: Saurabh Shyam Shamshery

Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 83

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7306 of 2021

Applicant :- Mange Lal

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery, J.

Heard learned counsel for the parties and perused the record.

Applicant - Mange Lal has approached this Court by way of filing the present Criminal Misc. Bail Application u/s 439 Cr.P.C. seeking enlargement of bail in connection with F.I.R. dated 24.9.2020 arising out of Case Crime No.205 of 2020, under Sections 394, 411 I.P.C., Police Station - Fatehpur Sikari, District - Agra after rejection of his bail application, vide order dated 14.12.2020, passed by Additional District and Sessions Judge, Agra.

In the present case, the first informant has lodged the First Information Report u/s 394 I.P.C. alleging that on 23.9.2020, at about 1 p.m., two unknown persons committed robbery while he along with his wife was going to meet his sister and certain ornaments of gold and silver were robbed. The record further reveals that on 30.9.2020, on the information received from informer, the police party apprehended two motorcycles during raid. Both motorcycles fall down and from there, three persons were arrested namely Mange Lal (applicant) and co-accused Amit and Aakash. Aakash was driving motorcycle, applicant and Amit were sitting on the said motorcycle. From the possession of

applicant, a country made pistol was recovered, from co-accused one knife and some ornaments were recovered and from other co-accused Amit, a bag was recovered wherein one country made pistol, some mobile phones and certain ornaments were recovered. All three accused made a confessional statement and they disclosed their involvement in offence of robbery referred above.

Shri Ashok Kumar Gupta, learned counsel for the applicant submits that there is no recovery from the possession of applicant when he was apprehended which could connect him to the offence of theft. He further submits that no case is made out against applicant u/s 394 and 411 I.P.C. There is no public eye-witness to the alleged recovery, applicant was falsely been implicated in the present case and later on, he was made an accused in several cases for the offence of robbery, however, he has already been granted bail by trial court in many of the cases. He lastly submits that applicant is innocent and is languishing in jail since 30.9.2020 and in case, he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

Learned A.G.A. has vehemently opposed the prayer of bail and submits that applicant is habitual offender and due to recovery from a person, travelling along with him on one motorcycle, he has been made an accused in several cases of robbery and in these circumstances, bail application of applicant is liable to be rejected.

Law on bail is well settled that 'Bail is rule and jail is exception'. Bail should not be granted or rejected in a mechanical manner as it concerns the liberty of a person. At the time of considering an application for bail, the Court must take into account certain factors such as the existence of a prima facie case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the Courts as well as the criminal antecedents of the accused. It is also well settled that the Court while considering an application for bail must not go into deep into merits of the matter such as question of credibility and reliability of prosecution witnesses which can only be tested during the trial. Even ground of parity is one of the above mentioned aspects which are essentially required to be considered while considering application for bail. It is also well settled that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner, compassionately and not in whimsical manner. Conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

From the records, it appears that applicant was apprehended along with co-accused while travelling on a single motorcycle and from possession of one of co-accused travelling with him, many incriminating articles were recovered which connect applicant and co-accused to various occurrence of robbery including present offence. It appears that applicant is involved in many of such occurrence. There is no legal force in the argument that applicant is entitled for bail as he was already been granted bail in other cases of similar nature by trial court. Applicant appears to be habitual offender who has indulged in many occurrence of robbery, such a person is not entitled for bail, and therefore, bail application of applicant is hereby rejected.

Order Date :- 2.2.2021 Rishabh [Saurabh Shyam Shamsbery, J.]