

Arun Kumar vs State Of U.P. on 16 December, 2024

Author: Raj Beer Singh

Bench: Raj Beer Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2024:AHC:196505

Reserved

Court No. - 75

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34216 of 2024

Applicant :- Arun Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ambreen Masroor, Sadrul Islam Jafri, Sr. Advocate

Counsel for Opposite Party :- Chandra Prakash Tiwari, G.A.

Hon'ble Raj Beer Singh, J.

1. Heard Sri N.I. Zafari, learned Senior Advocate, assisted by Sri Sadrul Islam Jafri, learned counsel for the applicant, Sri Chandra Prakash Tiwari, learned counsel for the informant and learned A.G.A. for the State.

2. The present second bail application has been filed on behalf of the applicant in Case Crime No. 234 of 2020, under Section - 387, 306, 504, 506, 120-B I.P.C. and Section - 7/7A/8/12/13 Prevention of Corruption Act, 1988, Police Station - Kabrai, District - Mahoba with the prayer to enlarge the applicant on bail.

3. The first bail application of application was rejected by this Court vide order dated 22.05.2023, which is reproduced herein below :-

"1. Heard Sri G.S. Chaturvedi and Sri N.I. Jafri, learned Senior Advocates, assisted by Sri Mohd. Aqueel Khan, learned counsel for the applicant, Sri I.K. Chaturvedi, learned Senior Advocate, assisted by Sri Chandra Prakash Tiwari, learned counsel for the informant and Sri Rajesh Mishra, learned AGA along with Sri Abhijit Mukherjee and Sri Abhishek Srivastava, Brief holders for the State.

2. The present bail application has been filed by the applicant in case crime No. 234 of 2020, under Sections 387, 120-B, 504, 506, 306 IPC & Section 7/7A/8/12/13 of Prevention of Corruption Act, police station Kabrai, District Mahoba with the prayer to enlarge the applicant on bail.

3. The informant, namely, Ravikant Tripathi has lodged the first information report on 11.09.2020 against Manilal Patidar, the then Superintendent of police, Mahoba, Devender Shukla, the then SHO of PS Kabrai (Mahoba), Suresh Soni, Brahmdutt and some subordinate police officials, alleging that his brother Indrakant Tripathi (hereinafter referred to 'the deceased') was partner in 'R.J.S. Crusher' and earlier he was associated with 'Maa Kali Associates' and 'I.P. Traders' and he was having the licence of sale and purchase of explosive substance. Another dealership of explosive substance was with 'Suraya Chemical' of Suresh Soni and 'Ajay Enterprises' of Brahmdutt. Said Suresh Soni and Brahmdutt were having a liaison with the then Superintendent of Police Manilal Patidar (hereinafter referred to 'the then S.P.') and they used to pay Rs. 6 lacs monthly to the then S.P. In the month of June, 2020, the then S.P. made demand for illegal gratification of Rs. 6 lacs from the deceased but the deceased expressed his inability, due to which, the then S.P. along with his subordinate police officials has threatened the deceased to implicate him in false cases and to ruin his life. In the month of June, July, 2020 the then S.P. forcibly extorted Rs. 6 lacs from the deceased but after that deceased has refused to pay any further amount. The then S.P. got the deceased threatened by the Station House Officer, police station Kabrai and co-accused Suresh Soni. On 03.09.2020, deceased went to the office of the then S.P. and told that his partners have already closed the business of explosive substance and he has also suffered huge losses and thus, he is unable to pay any amount. On this, the then S.P. threatened that he would get him into the jail and he would get him murdered in a manner, which would look like a suicide and that Suresh Soni, financier, is also with him. Due to continuous threats of the then S.P. and the SHO of the said police station, the deceased became perturbed. On 05.09.2020 deceased sent a letter to the Chief Minister, U.P. Government and that a complaint was also made viral on face-book and on other means of social media. Due to these acts, the then S.P. became more hostile towards the deceased and he started getting the deceased threatened from his subordinate police officials that he would be implicated in false cases and he would also be get killed. On 07.09.2020 at 12:00 noon and on 08.09.2020 at 10:00 AM, deceased made his video viral saying that it may be possible that he would not be alive by tomorrow (next day), as the then S.P. has threatened to kill him and he is making demand of Rs. 6 lacs per month from him and he is unable to pay the same. As this message has gone viral, the

deceased started getting more threats. On 08.09.2020, the deceased informed that on 09.09.2020 at 11:00 AM, he would be organizing a press conference at 'R.J.S. Granite' and would show each and every evidence of corruption being done by the then S.P., Mahoba. After that the then S.P., Station Officer Kabrai Devendra Shukla and some of their subordinate police officials and co-accused Suresh Soni and Brahmdutt, after hatching a conspiracy, made an attempt to get the deceased killed by firing. On 08.09.2020 at 2:30 PM, the deceased was found lying in injured condition in his car no. UP95-N-2900 on Kabrai-Banda road. On the basis of information from some passers-by, the deceased was sent to government hospital, Mahoba. On information, the informant also reached there. Due to serious condition, the deceased was referred to Kanpur and there doctors told that deceased has sustained a bullet at neck and he is on ventilator. It was also alleged that due to the acts and conduct of the then S.P. and his subordinate police officials and said Suresh Soni and Brahmdutt, an atmosphere of fear has prevailed in the entire area.

4. The first information report was registered on 11.09.2020 at 19:49 hours, under Sections 387, 307, 120-B IPC and Section 7/13 of Prevention of Corruption Act at police station Kabrai, district Mahoba. Initially investigation was taken by Sri Raj Kumar Pandey, Dy. S.P.. On 13.09.2020 the deceased succumbed to injuries and thus, section 302 IPC added. On 14.09.2020 an Special Investigation Team (SIT) was constituted for investigation of this case. During investigation, on the basis of Ballistic report dated 24.09.2020 and statements of witnesses, the Investigating Officer has converted the case from Sections 302/307 IPC to Section 306 IPC along with sections 387/120-B/504/506 IPC and Section 7/13 of P.C. Act by observing that the deceased has committed suicide by firing bullet at himself. During investigation, involvement of accused Constable Arun Kumar (applicant) was also revealed.

5. As per postmortem report, the cause of death of deceased is shock and septicaemia due to firearm injury. The deceased has sustained following ante-mortem injuries:-

"(i) L.W. size about 0.5 x 0.5 cm over 2.0 cm below C-7 cervical bone deep. C yellowish discharge blackening around the margins converted.

(ii) L.W. size about 3.0 x 2.0 cm over 2.5 cm above medial end of rt. Clavicle C yellowish discharge.

(iii) Injury no. 1 is commanding to injury No 2 between

-C7 and TI vertebra.

-Muscle and trachea and esophagus lacerated laterally."

6. It has been argued by learned Senior Advocate appearing for the applicant-accused that the applicant-accused is innocent and he has been falsely implicated in this case. The applicant is not

named in the first information report. The applicant was not named even in statements of witnesses, recorded at initial stage of investigation. His name has figured for the first time in the complaint made by the informant to DGP, U.P., Lucknow. It was submitted that before incident, the deceased has made a complaint to the Chief Minister and also published a post on his face-book on 07.09.2020 and on 08.09.2020 but applicant was not named therein. The allegation that applicant is owner of 30-35 dumpers and JCB machines is false and baseless. The statements of co-accused persons, who have named the applicant, have no value in law. The applicant is working in police and at the time of alleged incident, he was not posted in the police station Kabrai or even in district Mahoba and in fact he was transferred from district Mahoba much time before and he was posted in district Banda and he has absolutely no concern with the incident in question.

7. It was further submitted that as per postmortem report, the deceased has sustained one lacerated wound of 0.5 x 0.5 cm below C-7 cervical bone deep, blackening around margin (inverted), one lacerated wound size 3.0 x 2.0 cm over 2 cm above medial end of right clavicle blade and the injury No.1 is communicating to injury No. 2. Though, as per the FSL report dated 18.09.2020, it is not clear as to whether the wound of entry was on the front or on the back of deceased but the above referred characteristics shown in postmortem report, clearly show that fire arm entry wound is on the back of neck while wound of exit is on the front side and thus, it was not possible for the deceased to fire at himself at back of his neck and therefore prima facie it is case of murder and not of suicide. It is not the case of prosecution that the deceased was murdered or that the applicant was involved in murder of deceased, rather the case of prosecution is that applicant along with co-accused persons, was involved in extortion and threatening the deceased and forcing him to pay money for the then S.P., and thereby abetted the deceased to commit suicide. Referring to the charge-sheet, it was submitted that case against applicant is that the applicant has abetted the deceased to commit suicide but as stated above, prima facie it is case of murder. Once it is found that it is case of murder, thus, no offence under Section 306 IPC is made out against the applicant.

8. Learned Senior Advocate further submitted that even considering the alleged complaint made by the deceased to the Chief Minister and the statements of witnesses, recorded during investigation, the ingredients of offence under Section 306 IPC are not made out. The prosecution has suppressed the genesis of the incident. The FIR was not lodged for three days. The licensed pistol of deceased, used in the incident, as well as other belongings of deceased, were removed from the spot of incident. The alleged pistol was handed over by the informant to the police after 11 days of incident. During that period, the Investigating Officer did not try to search the said pistol. The informant has not clarified that how and when he came into possession of said pistol. As per FSL report, the empty cartridge (EC-1) was fired from the pistol but the bullet 7.65 mm 9 marked as EB-1) could not be matched with pistol of deceased or with pistols of accused persons seized by the police during investigation. The statement of Dipendra Singh, who was 'Muneem' of deceased, has been recorded after one month of incident and no explanation for this delay has been shown. It was submitted that there is no credible evidence to show that applicant demanded any bribe from the deceased or he was involved in extortion of money from deceased. Referring to facts of the matter and statements of witnesses, recorded during investigation, it was submitted that whole prosecution story is surrounded with suspicion and mystery and genesis of the incident was deliberately concealed and that there is no credible evidence against the applicant. Lastly, it has been submitted that the

applicant-accused is languishing in jail since 01.12.2020, and that in case, applicant-accused is enlarged on bail, the applicant-accused will not misuse the liberty of bail.

9. Per contra, learned Senior Advocate appearing for the informant has opposed the bail application and argued that there is sufficient evidence to show the involvement of the applicant in the incident. It was submitted by the learned senior Advocate that the police have not conducted investigation properly. It is a case of murder and that it was illegally converted from Section 302 IPC to Section 306 IPC. The Investigating Officer has recorded false statements of some witnesses in order to show that it is a case of suicide. After incident, the informant got the deceased admitted in the hospital. The delay in lodging the first information report took place as the informant was busy in treatment of deceased and thus, delay has been duly explained. Referring to postmortem report of deceased, it was stated that nature of injury sustained by the deceased, shows that it was not possible for the deceased to cause the said injury himself by firearm and thus, it was a case of murder. In photo of the car of deceased, no mark of bullet injury has been shown in the driving seat of the car. Referring to facts of the matter, it was submitted that the deceased was repeatedly being pressurized and coerced to pay illegal gratification. It was submitted that in reply to the face-book note of deceased, the then S.P. has to call a press conference, which goes to show the magnitude of threat that was being faced by the deceased. The deceased has recorded his version showing serious apprehension of being killed by the then S.P. The incident in question is very serious and sensational. The deceased was not involved in any mining, rather he was doing business of explosive and running a stone crusher and he was issued a character certificate by the office of the District Magistrate.

10. Referring to facts of the matter, it was submitted that the then S.P. was running an extortion racket and the applicant was one of the active member of the said racket and he was actively involved in the extortion of money and in fact he was working as collection agent. Though the applicant is not named in the first information report but during investigation sufficient evidence has been collected to show that he was involved in extortion of money from the deceased as well as from other businessmen, who were involved in business of mining. On 04.09.2020 the applicant Arun Kumar came at office of deceased and threatened the deceased that if the amount was not paid to the then S.P., he would face dire consequences. The applicant has amassed huge property by indulging in extortion and illegal mining and he is owner of 30-35 dumpers and JCB machines. The applicant was dismissed from service of police, as he was found involved in extortion. Learned Senior counsel has referred various statements of witnesses and documents on record and submitted that there are serious allegations against applicant and that in case he is granted bail, he may threaten the witnesses and temper with the evidence and thus, he is not entitled for bail.

11. Learned Additional Government Advocate submitted that there are serious allegations against the applicant. There is evidence that applicant was engaged in the extortion racket. Though, the applicant was not named in the first information report but during investigation, the involvement of the applicant was revealed in the statement of co-accused persons Suresh Soni and Brahmdudd. Applicant is named in the supplementary statement of informant. Referring to the statements of co-accused persons and of witnesses, it was submitted that applicant was working as collection agent of the then S.P. The applicant has threatened the deceased that in case he does not pay the amount of Rs. 6 lacs to the then S.P., he has to face dire consequences. After death of deceased in

hospital, Section 302 IPC was added but in view of subsequent report of the Joint Director, State Medico Legal Cell, it has emerged that point of firearm entry wound is below the chin and thus, on the basis of FSL, case was converted from Section 302 IPC to Section 306 IPC. It was stated that whether the case falls under Section 302 IPC or Section 306 IPC, it may be considered by the trial court at appropriate stage.

12. Learned AGA has also referred statement of Dipendra Singh, who was working as Muneem/Cashier of deceased, as well as statements of Bablu Maharaj and Purushottam Soni, and pointed out that the applicant was continuously indulging in collection of illicit money from deceased and other businessmen on behalf of the then S.P. Further, after registration of the case, applicant has absconded and he has surrendered only after issuance of non-bailable warrants against him. Applicant was working in police but he was continuously indulging in illegal activities and was actively involved in collection of illegal money from various businessmen. Due to acts of applicant, he has already been dismissed from service on the ground that he was engaged in extortion of money. Referring to facts of the matter and statements of witnesses, recorded during investigation, it was submitted that there are serious allegations against the applicant. The act and mischief of applicant becomes more serious because he was indulging in such activity while he was working in police.

13. I have considered the rival submissions and perused the record.

14. Before proceeding further it may be observed that in case of State through C.B.I vs. Amaramani Tripathi? [(2005) 8 SCC 21], the Apex Court held that a Court granting bail to an accused, must apply its mind and go into the merits and evidence on record and determine whether a prima-facie case was established against the accused. It was held that the seriousness and gravity of the crime was also a relevant consideration. The Hon'ble Apex Court has, in a catena of judgments, outlined the considerations on the basis of which discretion under Section 439 CrPC has to be exercised while granting bail. In landmark judgment of Gurcharan Singh v. State (Delhi Administration) (1978) 1 SCC 118, the Apex Court has laid down various parameters which must be considered while granting bail. The Court held as follows:

"24. ?Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

15. It was held that above factors do not constitute an exhaustive list. The grant of bail requires the consideration of various factors which ultimately depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. However, certain important factors that are always considered, inter-alia, relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused.

16. It is also to be kept in view that at the stage of granting bail, the Court is not required to enter into a detailed analysis of the evidence in the case. Such an exercise may be undertaken at the stage of trial. In case of *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496, the Court held as under:

"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

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

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

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

(vi) likelihood of the offence being repeated;

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

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

xxx xxx xxx

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal?.."..

17. In *Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118, the court followed the observations made in *Prasanta Kumar Sarkar* (supra) and held as follows:

"17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment?"

18. A three Judges' Bench of the Apex Court in *Jagjeet Singh & Ors. V. Ashish Mishra @ Monu & Anr.* in Criminal Appeal No. 632 of 2022, has reiterated the factors that the Court must consider at the time of granting bail under Section 439 CrPC, as well as highlighted the circumstances where this Court may interfere when bail has been granted in violation of the requirements under the above-mentioned section. The Court observed as follows:

"28. We may, at the outset, clarify that power to grant bail under Section 439 of CrPC, is one of wide amplitude. A High Court or a Sessions Court, as the case may be, are bestowed with considerable discretion while deciding an application for bail. But, as has been held by this Court on multiple occasions, this discretion is not unfettered. On the contrary, the High Court or the Sessions Court must grant bail after the application of a judicial mind, following well established principles, and not in a cryptic or mechanical manner."

19. In case of *Kalyan Chandra Sarkar V Rajesh Ranjan alias Pappu Yadav & Anr.* ? [(2004) 7 SCC 528], the Court held that although it is established that a Court considering a bail application cannot undertake a detailed examination of the evidence and make an elaborate discussion on the merits of the case, the Court is required to indicate the prima facie reasons justifying the grant of bail.

20. Keeping the aforesaid legal position and facts of the matter in view, in the instant case, it may be observed that applicant is not named in the first information report but it was stated that in the first information report that some subordinate police officials were also involved in the extortion of money from deceased and other businessmen. The informant has named him in his supplementary statement. From statements of co-accused persons as well as statements of witnesses, particularly from the statement of Dipendra Singh, who was working as Muneem/cashier of deceased, it is apparent that applicant was actively involved in the racket of extortion of money from various businessmen, including deceased. Said Dipender Singh has inter-alia stated that earlier the deceased was paying Rs 6 lacs/ per month to Superintendent of police Manilal Patidar, Rs one lac/ per month to Devender Shukla SHO of PS Kabrai and Rs 15,000/ per month to Constable Arun Kumar (applicant-accused). He has further stated that on 04.09.2020, the applicant-accused constable Arun Kumar came at the office of firm and at that time the brother of deceased as well as Bablu Maharaj and Purushottam Soni, who are partners of the firm, were present. The applicant has

threatened that if an amount of six lacs was not paid to the S.P., he would ruin his life. This version is supported by said Bablu Maharaj and Purushottam Soni. It appears from statements of witnesses that the applicant has visited the office of deceased for several times and made demand of illegal gratification on behalf of the then S.P..

21. Perusal of record further shows that the deceased was partner in 'R.J.S. Crusher' and he was also associated with 'Maa Kali Associates' and 'I.P. Traders', having the licence of sale and purchase of explosive substance and he was continuously being harassed to pay Rs. 6 lacs monthly to the then S.P. The deceased has expressed his inability by saying that he is no more doing the business of explosive substance and thereafter he was continuously being harassed and threatened by the then S.P. by his subordinate police officials. It has emerged in the investigation that applicant was working as collection agent of the then S.P.. On 05.09.2020, the deceased has made a complaint to the Chief Minister, U.P. Government, and that a complaint was also made viral on face-book and thereafter the then S.P. has increased the harassment of deceased through other accused persons, including applicant. On 07.09.2020, the deceased has posted a video saying that it may be possible that he would not be alive by tomorrow, as the then S.P. was threatening to kill him and he was demanding Rs. 6 lacs per month from him. On 08.09.2020, the deceased has also told that he would organize a press conference on 09.09.2020 to show the evidence of corruption being done by the then S.P. and his subordinate police officials and other co-accused persons. On the same day i.e. 08.09.2020 at 2:30 PM, he was found in injured condition in his car and he having bullet injuries. It would be interesting to note that the case of applicant as well as of the informant is that in view of nature of injuries, as discussed above, it is a case of murder. Be that as it may, it is quite apparent that applicant was actively involved in the racket of extortion and he was working as collection agent on behalf of the then S.P. It appears that a well organized extortion racket was being run by the accused persons to extort illicit money from various businessmen. From facts emerged during investigation, it appears that the applicant-accused was actively involved in extending threats to the deceased, in order to coerce him to pay Rs six lacs per month to the S.P. Manilal Patidar. The applicant was allegedly working as collection agent of the then S.P. Applicant was working in police, however, later on he was dismissed from service. It is quite disturbing that the police officials were indulging in such an illegal act of extortion in a clandestine manner. In view of prevailing circumstances, no leniency must be shown to such police officials, who indulge in such misdeeds and acts of corruption, threat and extortion of money for themselves or to extort money to pay their corrupt senior officers. Further, though the applicant was working as a constable but it appears that he was enjoying considerable clout and thus, the possibility of tempering with witness, can not be ruled out.

22. Considering submissions of learned counsel for the parties, nature of accusations, the role of applicant as emerged during investigation, the possibility of tampering with evidence and all attending facts and circumstances of the case, the Court is of the view that accused-applicant is not entitled for bail.

23. Accordingly, the instant bail application filed on behalf of applicant Arun Kumar is rejected."

4. Learned senior counsel for the applicant submitted that at the time of incident applicant was working as police constable in district Banda and he was transferred from district Mahoba to district Banda much time before the incident and the allegations made against applicant are wholly false. The allegation that the applicant used to collect money for the Superintendent of Police, Mahoba is wholly false. Learned counsel has pointed out some infirmities in the investigation. There is no evidence that the applicant has abetted the deceased to commit suicide.

5. It is further submitted that the applicant is in jail since 01.12.2020 and thus, he has already undergone detention of about four years and that the case is still at the stage of charge. The trial of the case is likely to take sufficient long time. The applicant has been charge-sheeted for offence under Sections 387, 306, 120-B, 504, 506 I.P.C. and 7/7A/12/13 Prevention of Corruption Act and the maximum sentence for the aforesaid offences is up-to 10 years imprisonment and thus, the applicant has already undergone more than one-third of the maximum sentence prescribed and trial of the case is yet to commence.

6. Learned counsel for the informant and learned A.G.A. have opposed the prayer for bail and submitted that applicant was involved in the alleged incident, wherein the deceased has committed suicide due to the harassment meted out by applicant and co-accused persons. Deceased was harassed and threatened by the applicant and the co-accused to pay Rs. Six lakhs per month to the then S.P., namely, Manilal Patidar. Applicant used to collect money from deceased and other businessmen. There is evidence that the applicant was actively involved in the entire scenario of the incident. It was further submitted that first bail application of applicant has already been rejected on merits and no new ground for entertaining this second bail application is made out.

7. I have considered the rival submissions and perused the record.

8. The first bail application of applicant was rejected by this Court by a detailed order dated 22.05.2023. Mainly, the allegations against applicant are that the deceased was doing business of stone crusher and explosive substances and that applicant and co-accused persons, including Superintendent of Police, were pressurising and harassing the deceased to pay Rs. Six lakhs per month to the Superintendent of Police and consequently he committed suicide by causing gun shot injury. Before the incident, deceased has made a complaint to the Chief Minister and a video was also published. The main allegation against applicant is that he was indulging in collection of money from deceased and other businessmen for the S.P., Mahoba. It was shown that the applicant has already been transferred from district Mahoba. The applicant is in jail since 01.12.2020 and it appears that no witness has been examined so far, whereas the applicant has already undergone the detention of about four years. Applicant has no criminal antecedents. Recently in case of Re-Inhuman Conditions in 1382 Prisoners [Writ Petition (Civil) No. 406/2013], it has been held by Hon'ble Apex Court that provisions of Section 479 BNSS 2023 shall apply to all the under-trials in pending cases. Section 479 BNSS provides that where a person, who is first-time offender, has during period of investigation or inquiry or trial shall be released on bond by the Court, if he has undergone the detention for the period extending up to one-third of the maximum period of sentence specified for such offence under the law. In the instant matter, applicant is not a previous convict and he has already undergone more than one-third sentence of the maximum period of

sentence prescribed for the offences alleged. Thus, the aforesaid authoritative pronouncement of Hon'ble Apex Court is applicable in the present case. Similarly placed co-accused Devendra Shukla has already been granted bail.

9. In view of aforesaid facts, without expressing any opinion on the merits, a case for bail is made out. Hence, the second bail application is hereby allowed.

10. Let the applicant - Arun Kumar involved in the aforesaid crime be released on bail on furnishing a personal bond and two local heavy sureties each of the like amount to the satisfaction of court concerned subject to the following conditions:

- i. The applicant shall not tamper with the evidence during trial.
- ii. The applicant shall not pressurize/intimidate the prosecution witnesses.
- iii. The applicant shall appear before the trial court on the date fixed, unless personal presence is exempted.
- iv. The applicant shall not try to contact, threat or otherwise influence the complainant or any of the witness of the case.

11. In case of breach of any of the above condition, the trial court shall be at liberty to cancel the bail of applicant in accordance with law.

Order Date :- 16.12.2024 Anand