

# **Sonu Gupta vs State Of U.P. on 30 April, 2020**

**Author: Ashok Kumar**

**Bench: Ashok Kumar**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?In Chamber

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40122 of 2018

Applicant :- Sonu Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Amit Kumar Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Ashok Kumar, J.

This is the 3rd bail application on behalf of the accused-applicant in Case Crime No.1894 of 2013, under Sections 419, 420, 467, 468, 471 IPC and Section 66G, 66Gh Information Technology Act, Police Station Kotwali, District Ghazipur.

The first bail application was rejected by Hon'ble Harsh Kumar, J. vide the order dated 14.09.2016 which reads as follows;

"Rejoinder affidavit filed today in Court by learned counsel for the applicant is taken on record.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

Learned counsel for the applicant contended that the applicant has been falsely implicated for the offence in question; that as per averments made in F.I.R. on 21.12.2012 one Pramod Yadav moved an application for opening a savings bank account in Laldarwaja Branch of Bank of India at Ghazipur along with copy of voter identity, ration card and photograph and upon being identified by Aris Jameel, the savings bank account was opened in which subsequently a sum of Rs.9,01,000/- was got deposited through RTGS and the entire amount was withdrawn by the account holder through cheques and ATM; that upon enquiry, it was found that voter identity and ration card were forged upon which F.I.R. was lodged against the account holder Pramod Yadav and Aris Jameel; that as per prosecution the photograph over the account opening form and voter identity of Pramod Yadav actually belongs to applicant; that father of applicant Chhangur Gupta has disclosed to the Investing Officer that the photo on account opening form and bank papers belong to his third son Sonu Gupta, who lives in Bombay; that the applicant is not at all involved in the offence in question and has not committed any cheat; that the applicant educated only upto Class 10th and does work of Kabad in Bombay and lives there in a rented accommodation; that the I.O. has not collected any evidence as to how the amount was credited to the account of above Pramod Yadav through RTGS; that the applicant is innocent and has no criminal history; that the applicant undertakes that he will not make misuse the liberty of bail; that the applicant is in custody since 31.5.2014.

Learned A.G.A. vehemently opposed the prayer of bail and contended that the applicant is the main culprit who opened a fake savings bank account in the bank of India in Laldarwaja Branch at Ghazipur in the name of Pramod in well organized and pre-planned manner by producing forged voter identity, ration card and got himself identified by Aris Jameel; that it is wrong and highly improbable for some other person to open fake bank account in the name of Pramod Yadav by using photograph of applicant before the Bank Manager; that there can be no reason for any person and nobody can dare to use the photograph of applicant living at Bombay (as alleged) in opening the account and withdrawing the amount there from; that the report of Forensic Laboratory, Ramnagar, Varanasi by the Finger Print and Hand Writing Expert shows that the disputed signatures are identical to the specimen signatures of applicant; that the applicant is a very cleaver person, who has committed the fraud in a well organized and planned manner for usurping the huge money and is not entitled for bail.

Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I do not find it a fit case for bail.

The bail application of applicant Sonu Gupta in Case Crime No.1894 of 2013, under Sections 419, 420, 467, 468, 471 I.P.C. and Sections 66G, 66Gh Information Technology Act, P.S. Kotwali, District Ghazipur, is rejected accordingly.

However, the trial court is directed to expeditiously dispose of the trial subject to co-operation of applicant."

The second bail application No.41611 of 2017 came up for consideration before the Hon'ble Harsh Kumar, J. and the same was also rejected vide the order dated 25.05.2018, which reads as follows;

"Heard Shri R.P.S. Chauhan and Shri Yogesh Kumar Singh, learned counsel for the applicant and learned Additional Government Advocate appearing for the State and perused the record of the case.

This is a second bail application moved on behalf of the accused-applicant, Sonu Gupta in Case Crime No.1894 of 2013, under Sections 419, 420, 467, 468, 471 IPC and Section 66G, 66 Gh Information Technology Act, police station Kotwali, district Ghazipur. The first application for bail has been rejected by this Court vide order dated 14.9.2016 passed in Criminal Misc. Bail Application No. 34477 of 2014.

By way of the second bail application, learned counsel for the applicant has not raised any new ground except that out of thirteen witnesses mentioned in a charge-sheet, only five have been examined till 20.1.2017 and no other witness has been examined after 20.1.2017.

Learned counsel for the applicant contends that the delay in disposal of trial is not being made on the part of the applicant and since he is in custody for the last about four years, so he may be released on bail, as the statement of prosecution witnesses recorded upto now and not sufficient for his conviction and there is strong possibility of his acquittal.

Per contra, learned Additional Government Advocate has vehemently opposed the prayer of second bail application and contended that in this matter of misappropriation over nine lacs rupees by the applicant, the first bail application has been dismissed on merits; that as far as statements of PWs- 1 to 5 are concerned, the assessment of evidence may not be made by this Court and is required to be made by the trial court at the time of disposal; that the trial is likely to be concluded in near future; that the applicant if released on bail will abscond and will delay and defraud the trial.

Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I do not find it a fit case for bail. The second bail application of applicant, Sonu Gupta in Case Crime No.1894 of 2013, under Sections 419, 420, 467, 468, 471 IPC and Section 66G, 66 Gh Information Technology Act, police station Kotwali, district Ghazipur is rejected accordingly.

However, the trial court is required to conclude the trial expeditiously, if possible, within six months from the date of presentation of certified copy of this order."

By means of third bail application, learned counsel for the applicant has taken new grounds which are as follows:

That during investigation no proceeding has been undertaken by the investigating officer for comparing the photograph used in the aforesaid account opening from vide account No. 691710110006880 from the applicant and accordingly the photograph available in the bank record has not been compared with the applicant. No such proceeding is available in the entire case diary which falsifies the entire prosecution case.

That there is no photograph of the applicant over the bank account opening form, for opening and operating the aforesaid bank account No. 691710110006880 in the Bank of India Branch Lal Darwaja, Ghazipur. There is no photograph of the applicant over the alleged ration card and voter identity card used in the said bank account.

That during the investigation no incriminating articles connecting with the crime in question had been recovered from the possession or pointing out of the applicant.

Apart from the aforesaid pleadings, following fresh grounds have also been taken by the counsel for the applicant.

That in this case R. Vaidya Nathan was best witness who could say that he did not transfer any amount from his account rather any amount was transferred by their person playing fraud with bank actually in this case whichever fraud had been committed. It was committed by bank officers they just to save their skin lodged first information report taking shelter of Section 156(3) Cr.P.C.

That investigating officer was required to record the statement of R. Vaidya Nathan who was the best witness and could say how the amount in question was transferred from his account to account of Pramod Yadav. The investigating officer did not fairly investigate the case rather inconvenience of the bank officer just save than filed charge sheet against the accused.

I have perused and considered the documents and pleadings and find substance in the bail application. According to me fresh new grounds have been taken by the applicant which were not taken earlier while pressing first and second bail applications.

Admittedly, the applicant is in jail since 31st May, 2014 i.e since last about six years.

Let the applicant- Sonu Gupta involved in Case Crime No.1894 of 2013, under Sections 419, 420, 467, 468, 471 IPC and Section 66G, 66Gh Information Technology Act, Police Station Kotwali, District Ghazipur be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(v) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(vi) The computer generated copy of such order shall be self attested by the counsel of the party concerned.

(vii) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

In view of the extraordinary situation prevailing in the State due to Covid-19, the directions of this Court dated 6.4.2020 passed in Public Interest Litigation No. 564 of 2020 (In re vs. State of U.P.), shall also be complied.

The order reads thus:

"Looking to impediments in arranging sureties because of lockdown, while invoking powers under Article 226 and 227 of the Constitution of India, we deem it appropriate to order that all the accused-applicants whose bail applications came to be allowed on or after 15th March, 2020 but have not been released due to non-availability of sureties as a consequence to lockdown may be released on executing personal bond as ordered by the Court or to the satisfaction of the jail authorities where such accused is imprisoned, provided the accused-applicants undertakes to furnish required sureties within a period of one month from the date of his/her actual release."

However, The trial court is directed to conclude the trial expeditiously, preferably within six months from the date of presentation of certified copy of this order.

Order Date :- 30.4.2020 A.Kr.\*