

Avinash Gupta vs State Of U.P. on 9 March, 2021

Author: Sanjay Kumar Singh

Bench: Sanjay Kumar Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44045 of 2020

Applicant :- Avinash Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Gupta, Pankaj Kumar Rai

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh, J.

Heard learned counsel for the applicant as well as learned Additional Government Advocate for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant with a prayer to release him on bail in Range Case No. 06 of 2020-2021, under sections 2, 9, 17A, 39, 48, 48A, 49-A, 49-B, 51 of Wild Life (Protection) Act, 1972, police station Range Mukhyalay Range, district Gorakhpur, during the pendency of trial.

It is argued by the learned counsel for the applicant that the applicant is absolutely innocent and has been falsely implicated in the present case with some ulterior motive. It is further submitted by the learned counsel for the applicant that the father of the applicant is the owner of the shop, from where alleged recovery of remnant of several animals has been made. The said shop has been registered in the name and style of M/s Mahima Bhandar, under the Food Safety and Standards Act,

2006, copy of registration certificate has been brought on record as annexure 3 to the bail application. It is further submitted by the learned counsel for the applicant that the alleged incident is said to have been shown to be occurred on 29.09.2020, which was Tuesday, on that date, the market of the area being weekly off was closed. In support of this submission, learned counsel for the applicant has brought on record the copy of letter/certificate of one Umesh Chandra Madheshiya, who is the president of Gorakhpur Kirana Committee, Sahabganj, Gorakhpur, as annexure 4 to the bail application. It is also submitted by the learned counsel for the applicant that the alleged recovery of remnant of several animals is false, fabricated and concocted. In fact, no such recovery was effected from the shop of the father of the applicant. Learned counsel for the applicant submits that the applicant has no concern with the alleged recovery as the applicant is doing job as Sales-man. Learned counsel for the applicant also contended that the shop of the father of the applicant is situated in densely populated area, but there is no independent public witness of the alleged recovery, therefore false implication of the applicant cannot be ruled out in the present case. It is next contended that there are no chances of the applicant of fleeing away from the judicial process or tampering with the prosecution evidence. The applicant is languishing in jail since 29.09.2020. He does not have any criminal history to his credit. In case, the applicant is released on bail, he will not misuse the liberty of bail.

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 therefore, the applicant does not deserve any indulgence. In case, the applicant is released on bail, he will misuse the liberty of bail.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties, I am of the view that the applicant has made out a fit case for bail. Hence, the bail application is hereby allowed.

Let the applicant Avinash Gupta, be released on bail in the aforesaid case crime number on 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.

It is clarified that anything said in this order is limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

Order Date :- 9.3.2021 Sazia